A MANUAL OF CANON LAW

BY

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OF THE

ORDER OF FRIARS MINOR CONVENTUAL

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Pagan Rome once said:

Salus **REIPUBLICAE** *Suprema Lex*

but Christian Rome replied:

Salus **ANIMARUM** *Suprema Lex*

and Christian Rome survived.

PREFACE

The present manual aims to give the reader a general knowledge of the laws of the Church as these arc found in the Code of Canon Law.

Although the Code is already a fairly large volume in itself so that there may be some who will question the possibility of imparting even the elements of church law in a handbook of this size, nevertheless let it be noted that one-volume manuals arc usualh relied upon to convey the essentials of sacred liturgy. What is possible in the one case ought to be possible in the other. All the more is this true because the disciplinary norms of the Code are rar less numerous than the liturgical laws contained in the seven volumes of the Decreta Authentica. Obviously, it suffices that a manual contain a judicious selection of material and a reasonable amount of explanation of the same.

As to the material chosen for this manual, let it be observed that no chapter of the Code has been entirely overlooked. Certain subjects, it is true, called for more intensive treatment than others because of their more frequent application in practise, such as the law on pastors, on marriage, on censures, etc., and this necessitated a restriction of other material.

Yet, because no law of the Code is so remote from life that it may not find application at some time or other, so that it is always possible that the reader may need to know either some canons which have been entirely omitted in this manual, or only incompletely cited, or cited in the author's own words, for that reason the policy has been followed of referring constantly to the Code canons under the various headings and subjects discussed, to the end that these references may serve as so many sign posts directing the reader quickly and easily to the proper places of the Code itself, should he desire to read through some chapter in its entirety, or to assure himself of the complete wording of some canon in particular. Whereas, if he prefers an English text of the Code, he is referred

at this time to Fr. Woywod's two-volume work to be found in the manual's bibliography, where he may easily find any canon of the Code restated in accurate and excellent English.

The manual's commentary on the material selected ought to prove adequate for those who desire simply a working knowledge of the law. Should further commentary be desired, since daily life abounds with more casuistry than can he compressed within the covers of a single volume, the reader will find that the manual carries an extensive bibliography in which arc listed over 250 post-Code canonical works in the English language alone, while more than 1200 articles and consultations on canon law have been catalogued and indexed, these having been taken from American, periodicals intended for the use of the clergy.

Thus it is hoped that the bibliography will prove helpful to those readers who may require of the manual more than a general knowledge of the Code, and more than a ready reference guide. In particular, it is believed that the vast amount of reading material latent in the bibliography will be especially welcome to members of the diocesan curia, officials of the diocesan court, major superiors in clerical religions, and readers of papers at theological conferences.

The Author.

41 First Street,
Hoboken, New Jersey,
August 1, 1947

LIST OF ABBREVIATIONS

Ada—Ada Afoctolicae Sedit.

A.A.S.—Ada Afiotlolicae Sedit.

A.S.S.—Ada Sanctae Sedit.

('ode Comm., or Pon(. Comm.—Pontifical Committee for the Authentic Interpretation of the Canons *of* the Code.

H.O.—Holy Office.

EK.—The American Ecclesiastical Review.

HPR.— The Homiletic and Pastoral Monthly.

CST.—The Casuist.

Fontet—Fontej Codicit Juri/ Canonici by Cardinals Gasparri and Serédi. Other abbreviations found in this book are believed to be *elf-exp|anatorv.

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introductory f-^art

The law by which the Catholic Church throughout the world is governed at the present day is found in the *Code of Canon Law*.

It is our purpose to study the legislation of the Code somewhat in detail. But before doing so it may be well to consider, first *of* all, some general aspects of church law.

In four chapters of this introduction we shall discuss: 1) the natureof canon law as compared with other kinds of law: 2) the natureof canon law considered in itself; 3) the history of canon law; 4)the Code of Canon Law in general.

Chapter I

THE COMPARATIVE NATURE OF CANON LAW

Here let us consider: (1) the meaning of law in general; (2) the difference between divine, civil, and canon law; (3) the science of canon law; (4) the divisions of canon law; (5) the sources of canon law; (6) the importance of its study.

ART. 1.

The nature of law in general.

Law, understood in its broadest sense, is a rule of action. Therefore, any principle which governs orderly activity, whether of animate or inanimate creatures, may in that general sense be called a law. And so, one speaks of the laws of gravity, the laws *of* digestion, sensation, thought, etc.

But in a more restricted sense we mean by the word law a rule of human conduct. It can then be defined as a command imposed by a legitimate authority that exacts obedience. According to whether the commanding authority is God, the civil ruler, or the Church, wc have divine law, civil law, and canon law, or church law.

Sometimes the word law, understood as a rule of human conduct, is employed loosely to indicate a norm, or set of norms, agreed upon by private individuals for the regulation of conduct one toward another, as when wc speak of the laws of etiquette, the laws of games and sports, the by-laws of a private corporation, etc. But in the strictest sense we mean by law the command of the highest authority in a *necessary society,* i. e,, in Church or State. But the political subdivisions of these societies may possess true lawmaking power although in a subordinate manner, i. e., as long as their commands do not conflict with the laws of the supreme rulers, e. g., city ordinances, diocesan statutes, etc.

ART. II.

Nature of canon law in particular.

Canon law takes its name from the Greek *kanwn,* a word which in its original and material sense indicated an instrument used by carpenters and architects for drawing and measuring lines, much as we use our common ruler today. The word later took on a figurative meaning to signify any norm or standard in the abstract. The early Church thus spoke of the canon of Sacred Scripture, the canons of faith, the canons of morals, etc. The disciplinary measures enacted by church councils were early referred to as canons *of* discipline, but in time simply as canons. And by the ninth century the totality of all these disciplinary norms was universally spoken of as canon law.

Canon law, then, is that body of laws by which the Church of Christ is governed, and which is proposed and enacted by the ecclesiastical superiors.

It differs from *divine* law which has God *for* its author, whereas canon law proceeds from the lawmakers in the Church. However, some precepts *of* the divine law arc proposed to us by the Church, and, insofar as these precepts arc incorporated into her own legislation, canon law will at the same time be divine law. Thus, the canonical impediment to marriage between parent and child is of divine *natural* law, whereas the precept to confess one's sins in the sacrament of penance, although found in the Code of Canon Law, is of divine *positive,* or *revealed* law.

To the extent that canon law merely restates the divine law, it cannot be changed, and the Church cannot dispense from it. But, insofar as canon law is purely human law, it can be modified, and even abrogated entirely, e. g., the former marriage impediment between third cousins.

Canon law differs also from *civil* law. First, because the two laws have different authors, the Church and the State. Secondly, because they tend to different ends, canon law looking to things eternal, the salvation of souls, while civil law looks to things temporal, the bodily welfare of the citizens. At the same time both laws strive to maintain external order within the two societies, Church and State. A glance at the Code's table of contents will show how diverse is the subject matter with which canon law deals from that with which civil law is concerned.

ART. III.

Canon law considered as a science.

Besides indicating a body of legislation, canon law also designates the systematic study and presentation of church law. In this latter sense it is closely allied with other branches of sacred science.

Dogmatic theology proposes norms of belief; canon law, norms of conduct. Yet theology lays the foundations upon which the structure of church law is built, and gives the latter its philosophy and reason for existence. Canon law in turn supports, defends, safeguards theology, e. g., the law on forbidden books, on preaching and confession faculties, on the qualifications of the sacred ministers, the laws that safeguard the worthy administration and reception of the sacraments, etc.

Moral theology, like canon law, proposes norms of conduct, but these latter arc intended for the internal forum of conscience, while the former maintain external order in the ecclesiastical society. But since practically all canon law binds also in conscience, to that extent it is simultaneously the concern of the moralist. Hence, it is not surprising that the two studies often overlap, and that what is learned in the canon law class is often repeated in the moral theology class, and vice versa.

Pastoral theology is a composite of dogma, moral, canon law, and liturgy as applied directly to the care of souls. It restricts itself to that part of church law which is of immediate interest to pastors, so that what church law it does review will be somewhat limited in its content.

Liturgy, insofar as it is a body of laws proceeding from the church authorities, ought to be called canon law. However, its disciplinary norms concern only the proper maintenance of public worship. And because of the minutiae of its countless rulings, liturgy has been treated for centuries as a separate branch of church legislation, and as a study distinct from canon law.

ART. IV.

Divisions of canon law.

Canon law is divided:

(1) By reason of its author into *divine* canon law, and

human canon law, as wc have seen. In a certain sense we may also speak of *civil* canon law. The Church finds it helpful today, as in the past, to incorporate into her legislation many civil law norms. Thus, the civil law on contracts which obtains in any state or nation, the Church generally adopts for herself, to he observed by the church authorities of the particular country for regulating church contracts. Whenever the Church thus adopts civil law, and makes it a part of her own legislation, we say that she *canonizes* civil law.

(2) By reason of extent into *common* law and *particular* law. The former is that which is law for the universal Church, c. g., the laws of the Code. The latter is law for a particular country, or a definite group of persons, c. g., the decrees of plenary and provincial councils, diocesan statutes, the constitutions of religious Orders.

(3) By reason of form into the *written* and the *unwritten* law. The latter is also called custom.

(4) By reason of time into the *old* and the *new* law. The latter is the Code law, the former is pre-Codc law.

(5) By reason of function into *public* and *private* law. The former regulates the relations between Church and State; the latter regulates matters within the Church alone. Wc shall summarize public church law in the next chapter.

ART. V.

Sources of canon law.

We can distinguish between the efficient, the constituent, the supplementary and the documentary sources of canon law.

The *efficient* sources of canon law are simply the lawgivers in the Church. They arc: 1) the Roman Pontiff; 2) oecumenical councils; 3) plenary councils; 4) provincial councils; 5) residential bishops; 6) abbots and prelates *nullius',* 7) permanently appointed Apostolic Administrators; 8) general chapters in clerical exempt religions. All these lawgivers will receive more detailed consideration later in our manual.

Ecclesiastical superiors other than those just mentioned arc not empowered to enact laws. They may at the most issue commands which arc temporary in nature, and which are called *precepts.*

The *constituent* sources of canon law are those principles which serve as material in the enactment of new legislation. They are: 1) the natural law; 2) the divine positive, i. c., the revealed law of the Scriptures; 3) primitive church traditions; 4) custom; 5) civil legislation; 6) the writings or commentaries of canonists; 7) adjudication. i. c., the decisions of the Roman courts; S) the style, practise and decisions of the Roman Congregations given in particular instances to cover particular cases.

The *supplementary* sources of canon law arc those principles to which one may have recourse to supply for the silence of the law. They arc: 1) the general principles of natural law applied with canonical equity; 2) church laws framed for parallel situations; 3) the decisions of the Roman Congregations handed down in similar instances; 4) the common and approved teaching of canonists.

The *documentary* sources of canon law arc those collections and compilations which contain the text of the law as distinguished from commentaries on the law. In Chapter Ill we shall consider these collections at greater length.

ART. VI.

Importance of Canon Law Knowledge

In a certain sense all Catholics ought to be familiar with the laws of the Church, both the laity and the clergy.

The laity ought to know at least something of that legislation which immediately concerns themselves, such as the common precepts of the Church, the laws on Sunday observance, fast and abstinence, forbidden books, the marriage laws, etc. It is the duty of pastors to acquaint their people with all such church commands.

The clergy, more than the laity, arc governed in their everyday life by canon law. Hence, Pope Celestine says: *Nulli sacerdoti licet sacros canones ignorare.* All without exception ought to understand the common privileges and duties of clerics; all should have a working knowledge of the law governing the sacraments, public cult, and censures.

In addition, those who hold offices must know what rights and duties attach to their individual offices, whether as pastors, assistant pastors, chaplains, diocesan officials, directors of confraternities, seminary officials, church property administrators, or members of the diocesan court.

Finally, there are certain posts which cannot be adequately filled save by priests of exceptional canonical learning, as we shall see in the course of this manual.

Chapter II

THE PRINCIPLES OF PUBLIC CHURCH LAW

We have tried thus far to understand the nature of church law by comparing it with divine law and civil law. It remains to ask ourselves what the nature of canon law is when considered in itself. We shall see that it is not a body of by-laws framed by some private corporation within the State, but that like the civil law itself it is mandatory law, sovereign law, and even supreme law with respect to civil enactments. It is upon these assumptions that relations between Church and State are possible and even necessary. The government of the Church from without, i. e., in her dealings with the civil authorities, is determined by a set of principles derived from dogmatic theology in the treatise *De Ecclesia,* the totality of which principles, or norms, constitutes what is called public church law, which we propose to review briefly in the present chapter.

We shall consider: 1) the mandatory character of canon law; 2) its sovereign character; 3) its prerogative of supremacy over civil law; 4) the history of the exercise of ecclesiastical authority, and therefore, the historical vicissitudes of canon law with respect to civil recognition.

ART. I.

Canon law is mandatory law.

By this we mean to say that canon law is not a mere set of counsels. Nor is it what might be called conventional law, i. e., rules of action agreed upon by private persons for the regulation of conduct one toward another, as are the laws of etiquette, the laws of games and sports, etc. Canon law is mandatory law in the sense that it is law imposed by an authority which commands obedience, and which secures that obedience by coercion if need be.

Our proofs are from Scripture, the Acts of the Apostles, and the ageless practise and teaching of the Church herself.

Sacred Scripture—While it is true that in one place our Lord only commissions the Apostles to teach and baptize: *All power is given to Me in heaven and in earth. Going, therefore, teach ye all nations, baptizing them,* etc. (Mt. XXVIII, 18-19), but is silent concerning their right to command, yet from other texts it is clear that He conferred upon them the fullness of authority. They are vested with the same authority He possesses: *As the Father hath sent Me, I also send you* (Jn. XX, 21). But Christ, as God, had authority to command. And again: *Amen I say to you, whatsoever you shall bind upon earth, shall be bound also in heaven; and whatsoever you shall loose upon earth, shall be loosed also in heaven* (Mt. XVIII, 18). Our Lord here speaks of a *moral* binding, not a physical one, and makes no distinction between the binding of the intellect through authoritative doctrine and the binding of the will through commands. Elsewhere *binding* was clearly employed in the latter sense: *They bind heavy and insupportable burdens,* where our Lord refers to the laws of the Scribes and Pharisees (Mt. XXIII, 4). Finally, *He that heareth you, heareth Me; and he that despiseth you, despiseth Me* (Lk. X, 16). Our Lord does not distinguish between hearing the Apostles when they teach, and hearing them when they command.

Example of the Apostles—The Apostles felt themselves empowered to issue laws and to govern the visible Church, not merely to explain with authority the teachings and commandments of God. In the first council of the Church, that held at Jerusalem, we find them enjoining upon the newly converted Christians *That you abstain from things sacrificed to idols, and from things strangled* (Acts XV. 29). In his epistles we see St. Paul constantly imposing commands, e.g., concerning the qualifications of bishops (Tim. III, 2 *sq.*); regarding the duties of married people (I Cor. VII, 12 *sq.*): concerning the dress of women in church (I Cor. XI, 4 *sq.*). And writing to the Corinthians he says: Now *I praise you, brethren, that in all things you are mindful of me; and keep my ordinances (praecepta) as I have delivered them to you* (Cor. XI, 2).

St. Paul, then, speaks explicitly of precepts, not counsels. This is further evident from the fact that their violation could be visited with punishment: *IFhat will you? Shall I come to you with a rod, or in charity and in the spirit of meekness?* (I. Cor. IV, 21). *And having in readiness to avenge all disobedience* (II Cor. X, 6); *And if any man obey not our word by this epistle, note that man and do not keep company with him* (II Thes. III, 14). Here the Apostle seems to refer to excommunication. Concerning the incestuous Corinthian, the Apostle serves warning on the faithful: *to deliver*

such a one to Satan for the destruction of the flesh (I Cor. V, 5). St. Paul throughout, we see, is threatening punishment against transgressors of his directions. These must have been mandatory in character, for no one is punished for merely violating counsels.

Practise of the Church—From primitive times the bishops, as successors of the Apostles, whether individually or gathered in councils, enacted norms for the government of the Church.

It is true that in times of persecution these norms could not be enforced with penal sanctions. But when this later became possible, in the 4th century, we find them imposing both spiritual and temporal punishments such as fines, banishment, etc.

If the early Church preferred to speak of her disciplinary norms as *canons* avoiding the Greek word *nomoi,* which alone designated laws in the strict sense, this simply means that she preferred spontaneous obedience from the faithful, that she preferred to employ moral suasion rather than coercion, but not necessarily that she felt her self deprived of real coercive authority.

Teaching of the Church—On this subject we have the following official pronouncements: 1) *If any man shall say that baptised persons are free from either the written or the unwritten commands of the Church, so that they need not observe them unless they wish to do so of their own free will, let him be anathema* (Counc. Trent, sess. VII, canon 8). 2) Pope John XXII condemned the proposition of Marsilius of Padua: *The whole Church taken collectively can punish no man, unless the Emperor permits it* (Const. *Licet,* Oct. 23, 1327; cfr. Denz, n. 499). 3) Pius IX condemned the following proposition: *The Church has not the power of using force, neither has she any temporal power, direct or indirect (Syllabus of Errors,* prop. 24) ; 4) Leo XIII in his encyclical *Immortale* says: *In very truth Jesus Christ gave to His Apostles unrestrained authority in regard to things sacred, together with the genuine and most true power of making laws, as also the two-fold right of judging and punishing which flow from that power (Revera,* Nov. 1, 1885; *A. S. S.* XVIII, 156); 5) The Code of Canon Law after recognizing supreme lawmaking power in the Pope (c. 218), and a subordinate legislative power in the bishops within their dioceses (c. 335), states in c. 2214: *It is the original inherent right of the Church, which she exercises independently of any human authority to coerce her delinquent subjects with both spiritual and temporal penalties.*

ART. II.

Canon law is sovereign law.

The laws of the Church arc sovereign laws in the sense that they in no wise depend for their validity or binding force upon the approval and sanction of the civil rulers. This is because, as we shall see, the Church is a sovereign society, called *societas perfecta* in Latin works on public church law. A society is sovereign if it can rightly claim no political superior over and outside of itself. To make such claim valid, the society must be able to show that it tends to an end which is not already a partial end pursued by a higher society, and that it has within itself all the means needed to pursue that end. Now the end which the Church prosecutes by divine command is the salvation of souls, an end which the State in no way concerns itself •with. It remains to prove that the Church, moreover, by the will of Christ her Founder, was given independence in carrying out her divine mission, namely, that Christ conferred upon the Church directly, and therefore, independently of the State, all powers needed, and all means required to achieve her end, the salvation of souls.

1) *Nature of the Church*—Christ, the Lord, willed His Church το be one in faith and doctrine. But adequate provision for such unity would not have been made had it been His intention to subordinate the Church to the State. For, as the history of the Protestant Reformation proves, where supreme ecclesiastical authority is vested in the secular ruler, there we have as many national Churches as we have distinct nations or States. For either the civil ruler will forbid his subjects the profession and practise of any religious faith save his own *(cujus regio illius et religio),* or where freedom of religious belief and practise is permitted in theory, he will, under the pretext of safeguarding the common welfare of the State or the rights of the citizens, dictate or at least restrain the doctrines, practises and activities of the Church in his territory. Hence, if purity of faith is to be preserved, if unity of doctrine is to mark the universal Christian Church, there must be in the Church by the will of Christ a *supernational* authority which can suffer no interference from any civil government.

2) *History of the Church*—The sovereignty of the Church is mot new doctrine. It was defended already by the Apostles who, when commanded by the Synagogue to desist from preaching the Gospel, replied: *We ought to obey God, rather than men* (Acts V,

29). It was the issue in the struggles between Pope and Emperor in the Middle Ages. It has occasioned concordats between the Holy See and civil governments.

3) *Teaching of the Church*— Pius IX condemned the following two propositions: (1) *The Church is nor a true and perfect society, entirely free; nor is she endowed with innate and perpetual rights of her own conferred upon her by her divine Founder; but it appertains to the civil pozver to define what are the rights of the Church, and the limits within which she may exercise those rights.* (2) *The ecclesiastical power ought not to exercise its authority without the permission and assent of the civil government {Syllabus of Errors,* prop. 19, 20).

Speaking of the Church, Pope Leo XIII says: *This society is made up of men, just as civil society is, and yet is spiritual and supernatural on account of the end for which it was founded, and the means by which it aims at attaining that end. Hence, it is distinguished and differs from civil society, and what is of the highest moment, it is a society chartered as of divine right, perfect in its nature and in its title, to possess in itself and by itself, through the will and loving kindness of its Founder, all needful provision for its maintenance and action. And just as the end at which the Church aims is by far the noblest of ends, so is its authority the most exalted of all authority, nor can it be looked upon as inferior to the civil power, or in any manner dependent upon it {Immortale, § Haec societas).*

In the opening lines of the Bull *Providentissime Mater Ecclesia* whereby Benedict XV promulgated the Code *of* Canon Law we again find reference to the sovereignty of the Church: *Most provident Mother Church, having been established by Christ her Founder in such wise that she might be endowed with all notes befitting a perfect society. . . .*

And in canon 100, §1 we read: *The Catholic Church and the Apostolic See are moral persons* (corporations, societies) *by divine right.* This means that the Church exists without permission of the civil government. Necessarily incidental to this right to exist are the inherent rights of organization, propaganda, of acquiring property, etc.

Given two distinct and independent authorities over the same subjects, however, i. e., the Church and the State with respect to baptised persons, conflicts would easily arise if there existed no boundaries or limits of demarcation between the two powers. The

rule, therefore, is that in matters spiritual the Church is sovereign whereas the State is sovereign in matters temporal. To quote Leo XIII again: *The dlmighty has appointed the charge of the human race between two powers, the ecclesiastical and the civil, the one being set over divine, the other over human things. Each in its kind is supreme, each has fixed limits within which it is contained, limits which are defined by the nature and special object of the province of each, so that there is, we may say, an orbit traced out within which the action of each is brought into play by its own native right. . . . Whatever, therefore, in things human is of a sacred character, whatever belongs, either by its own nature or by reason of the end to which it is referred, to the salvation of souls or the worship of God, is subject to the power and judgment of the Church. Whatever is to be ranged under the civil and political order is rightly subject to the civil authority. Jesus Christ has Himself given command that what is Caesars is to be rendered to Caesar, and that what belongs to God is to be rendered to God (Immortale, § Itaque; Quidquid).*

The Church, then, is sovereign with respect to things *sacred.* Things are sacred which refer to the salvation of souls or the worship of God, cither by their very nature, e. g., the preaching of the word of God, the administration of the sacraments, the regulation of acts of public cult, judgment concerning the morality of human acts; or by reason of the religious end to which they refer, though in themselves they are material and temporal, e. g., churches, chapels, altars, chalices, funds for the maintenance of the clergy, etc.

On the other hand, the State is sovereign with respect to things temporal, e. g., the safeguarding of the liberty, reputation, and bodily integrity of its citizens, the protection of their property rights, the supervision of the public health—in a word whatever conduces to the advancement of the material welfare and prosperity of the citizens.

The Church's sovereignty in matters spiritual is asserted in several canons of the Code. Taken together they constitute, as it were, the code of public church law. The following arc the most important claims:

1) The Catholic Church universal, and the Apostolic Sec arc corporations by divine law, and exist independently of civil recognition (c. 100, §1).

2) The Church has an independent right to personal organization (c. 109).

3) It is the right of the Roman Pontiff which he exercises

independently of the civil authorities to send his legates to any part of the world (c. 265).

4) It is the exclusive right of the supreme ecclesiastical authority to declare the divine law with respect to matrimonial impediments, and to establish both impedient and diriment impediments for baptised persons (c. 1038).

5) Sacred places arc exempt from the jurisdiction of the civil authorities, and the lawful ecclesiastical superiors alone exercise jurisdiction therein (c. 1160).

6) It is the right of the Church to possess her own cemeteries (c. 1206, §1).

7) In the exercise of public worship the sacred ministers depend on the ecclesiastical superiors alone (c. 1260).

8) It is the right of the Church independently of any civil ruler to teach the Gospel to every nation (c. 1322, §2).

9) It is the inherent and exclusive right of the Church to instruct those who desire to prepare for the sacred ministry (c. 1352).

10) It is the right of the Church to establish not only elementary schools but also high schools, colleges and universities for all branches of learning (c. 1375).

11) It is the right of the Church to forbid that the faithful publish books which have not obtained the previous ecclesiastical *imprimatur,* and for a just reason to forbid them the reading of certain publications (c. 1384, 1395).

12) The Catholic Church and the Apostolic See have original right freely and independently of the civil authorities to acquire, possess and administer temporal goods useful or necessary to their purpose. This right belongs also to any other moral person in the Church (c. 1496).

13) It is also the right of the Church independently of the civil authorities to exact of the faithful funds necessary to conduct public worship, to maintain the clergy becomingly and to carry on any other works of an ecclesiastical character (c. 1496).

14) The Church can acquire temporal goods by any just title of natural or positive law which is permitted to others (c. 1499).

15) Prescription as recognized by the civil law of each nation, the Church also adopts, saving certain matters where her own laws govern (c. 1508).

16) Those who by natural or ecclesiastical law are competent

to dispose of their temporal goods at pleasure can devote the same to pious causes either by an act *inter vivos,* or by last will and bequest (c. 1513).

17) When last wills arc made in favor of the Church let the formalities of the civil law be observed as far as possible; if they were omitted, the heirs shall be admonished to carry out the testator's wish nevertheless (c. 1513, §2).

IS) Concerning contracts and payments, whatever the civil law enacts should be observed also in ecclesiastical transactions, save where its rulings run counter to divine law, or canon law has some rulings of its own (c. 1529).

19) The Church by inherent and exclusive right judges:

1) Concerning causes spiritual or mixed;
2) Concerning the violation of ecclesiastical laws, and violations of civil law to the extent that sin is involved and for the purpose of determining guilt and inflicting ecclesiastical punishments;
3) Concerning even the temporal causes of clerics and religious.

In mixed causes where the civil and ecclesiastical authorities are equally competent, he who first takes cognizance of the case retains exclusive jurisdiction (c. 1553).

20) Marriage causes of baptized persons belong by original and exclusive right to the ecclesiastical court (c. 1960), saving causes involving the purely civil effects of marriage (c. 1961).

21) It is the inherent and original right of the Church, independently of any human authority to restrain her delinquent subjects with spiritual and temporal punishments (c. 2214).

ART. HL

Canon law is supreme human law.

Although the Church is sovereign in the spiritual order, and the State is sovereign in the temporal order, yet there exists a large number of so-called mixed matters over which both societies may claim jurisdiction. Mixed matters arc those which at one and the same time have both a religious and a temporal aspect, e. g., marriage, church property, processions in the public thoroughfares, ecclesiastical appointments, etc.

Even in mixed matters conflict between the two societies can be avoided by the application of this further principle: in mixed matters the Church has jurisdiction as far as the religious consequences reach, and the State as far as the temporal consequences. In practise, however, the solution is not so simple; one society may unduly extend its authority. In view of the independence which Church and State claim in matters falling within the proper sphere of each, the question naturally arises: who shall define the borderline in this so-called twilight zone of mixed matters?

The answer is given by Leo XIII, when after observing with St. Paul (Rom. XIII, 1) that all power is from God, and that the powers that are, are ordained of God, adds: *There must, therefore,, exist between these two powers a certain orderly connection, which may be compared to the union of the body and soul in man. The nature and scope of that connection can be determined only as we have laid down, by having regard to the nature of each power, and by taking into account the relative excellence and nobleness of their purpose. One of these has for its proximate and chief object the well-being of this mortal life; the other the everlasting joys of heaven (Immortale, § Sed quia; Itaque inter).*

In other words, of the two societies, the Church is the more excellent and noble, for the end at which it aims is nobler than that of the State, namely, the eternal welfare of the soul. And just as the welfare of man's body cannot take precedence over that of his. soul, so neither can the claims of the State take precedence over those of the Church; but rather, just as the body must at times suffer that the soul may be saved, so the State must be willing to sacrifice its claims when they are incompatible with those of the Church. Judgment, then, concerning competency in the zone of mixed matters must necessarii}' be reserved to the Church, just as every higher court is judge of its own jurisdiction as against a lower court.

This, then, is what is meant by the supremacy of ecclesiastical authority, and as a necessary corollary, the supremacy of canon law with respect to civil law. In the event that the State refuses to abide by the decision of the Church, and usurps rights belonging to the latter, the Catholic citizen need not hesitate for a norm of action. His loyalty must be given to the Church: the command of the Church prevails, and that of the State is excluded.

ART. IV

History of Ecclesiastical Authority

Neither the sovereignty of the Church in matters sacred, nor her supremacy in mixed matters, has been acknowledged by civil governments at all times and in all places. Concerning the historical vicissitudes of ecclesiastical authority, and therefore, the historical and present status of canon law, we shall confine ourselves to a few brief remarks.

In the *first three centuries* the Church was outlawed and persecuted as an illicit society. Christians were accused of atheism, superstitious practises, and treason against the State for refusal to worship the Roman gods. But in practise, during brief intervals of peace, Christians succeeded in organizing themselves into recognized societies for burial purposes. This, together with the fact that even in those early times the Church was already conscious of her rightful God-given independence of the State in the field of religion, explains how she could maintain internal order and develop a fairly perfect organization without external aid, and by appealing only to the conscience of her subjects, so much so that already in 313 the Emperor Constantine by his edict of Milan could accord Christianity the same legal status in the Empire that the religion of pagan Rome enjoyed.

From 313, when peace was restored to her *until* 1300, which period we may call the Middle Ages, the Church in the West (for the Byzantine Church was gradually absorbed by the State) increased in moral influence to such extent that she came to be regarded by civil rulers not only as a sovereign, but as the supreme authority. She enjoyed the full patronage of princes, her clergy were endowed with privileges including civil power, temporal lords vied one with the other in the erection of sacred edifices, churchmen sat in the councils of kings, canon law equally with civil law became the law of the land and was enforced by the secular arm. The distinction between things sacred and things temporal was lost sight of due to this mutual good will, while the term *mixed matters* was unknown. Conflicts were both few in number and insignificant in nature, if we except the struggle over investitures, and even this, ending as it did in victory for the Pope, only served to climax the power of the Church. It was the period of perfect union of Church and State because the Church was accorded her rightful supremacy in human society.

Referring to this epoch, Pope Leo XIII eulogizes as follows: *There was a time when States were governed by the principles of Gospel teaching. Then it was that the power and divine virtue of Christian wisdom had disused itself throughout the law's, institutions and morals of the people, permeating all ranks and relations of civil society. Then, too, the religion instituted by Jesus Christ, established firmly in befitting dignity, flourished everywhere, by favor of princes and the legitimate protection of magistrates; and Church and State were happily united in concord and friendly interchange of good offices. The State constituted in this wise, bore fruits important beyond all expectation, tvhose remembrance is still, and always will be, in renown, witnessed to as they are by countless proofs which can never be blotted out or obscured by any craft of any enemies. Christian Europe has subdued barbarous nations, and changed them from a savage to a civilized condition, from superstition to true worship. It victoriously rolled back the tide of Mohammedan conquest; retained the headship of civilization; stood forth in the front rank as the leader and teacher of all in every branch of national culture; bestowed upon the world the gift of true and many-sided liberty; and most wisely founded very numerous institutions for the relief of human suffering (Immortale, § Fuit aliquando tempus).*

From 1300 *to* 1789, i. e., to the French Revolution, although union of Church and State was theoretically maintained in Catholic countries, the supremacy of the State was asserted in practise. The Church continued as the State Church, and its sovereignty in things spiritual was not denied in theory, but the decision concerning the borderline in the zone of mixed matters was *de facto* usurped by the State. More than one cause brought about the changed attitude: the rise of sovereign states in the 14th century: and the teachings of Marsilius of Padua of the same century concerning the sovereignty of the people as contained in his book *Defensorium Pads;* the weakening of papal authority resulting from the exile at Avignon; the Western Schism; the Protestant revolt of the 16th century; and the so-called Catholic political theories concerning church authority which in France went by the name of Gallicanism, in Germany and Austria Febronianism and Josephism, in Italy and Spain Jurisdictionalism, but whose keynote being identical, namely the undue exaltation of the power of the king and emperor in ecclesiastical affairs, may generally be designated as Regalism or Caesariem.

The intrusion of the secular ruler in the affairs of the Church was rationalized and justified by the above schools of political thought on more than one specious pretext. The State, it was claimed, had control over all external and visible affairs, the Church should confine

herself to the purely spiritual and religious field. Again, the temporal ruler has the *jus cavendi,* i. e., the police power of safeguarding public order and of suppressing, even under the pretext of religion, crimes, frauds, etc. Moreover, not only the Holy Roman Emperor, but every sovereign ruler was the Defender of the Faith; it was his right and duty to protect religion *(jus advocatiae).*

Under the *jus cavendi* the regalists listed: the *placitum regium,* or the right of the king to forbid the publication of episcopal and papal decrees in the country; the *appellatio ab abusu,* or his right to rescind the sentence of the ecclesiastical court; the *jus exclusivae,* or his right to exclude undesirable candidates from ecclesiastical offices. In virtue of the *jus advocatiae* the following acts were considered justified: in general to protect the essentials of religion; in particular to convoke councils, to forbid pernicious books, to forbid the alienation of ecclesiastical goods, to administer the same for the good of souls, to determine the subject matter of sermons, to supervise religious instruction in schools, seminaries and theological faculties, to determine the number of holydays and fast days, to issue rules concerning sacred processions, etc.

Since these rights were supposed to be exercised without the necessity of consulting the ecclesiastical authorities, and were in fact so exercised, the supremacy of the State and the corresponding subordination of the Church were accomplished.

From the French Revolution to the present day—The French Revolution proclaimed the equality of all men not only in civic matters but also in religious conviction and practise. Therefore, no longer should the State acknowledge one religion to the exclusion of another, or support a State Church. The State should confine itself to the material prosperity of the citizens exclusively, the Church to their spiritual welfare. Both should go their own way without concerning themselves with the affairs of the other. This is known as the separation of Church and State as opposed to the union of Church and State which had hitherto existed in all Catholic countries, and in virtue of which the Catholic religion had always been the official religion of the State, which involved State protection and support, and simply toleration at most of any other religion.

Under the arrangement known as separation, the Church is not considered sovereign, much less supreme. Her status under the law is that of a voluntary association, subordinate like all other corporations to the civil authority. For this reason, and because in practise complete separation is an impossibility, since in mixed matters the State will either be friendly or hostile, the system cannot as a thesis

he defended by Catholics. As a thesis it was condemned by Pius IX when in his *Syllabus of Errors* he included the 55th proposition: *The Church ought to be separated from the State, and the State from the Church.* The proposition can be defended only as an hypothesis, namely, if and where the population of the country is not predominantly Catholic, and especially, as in the United States, where Catholics form a minority group.

The liberalism proclaimed by the French Revolution, however, was not without its benefits to the Church. It put an end to the divine right of kings and the absolutism of former times. By vesting sovereign authority in the people it furnished the Church with a new escape from oppression. The Church could now appeal directly to the Catholic solidarity in the nation and call upon them in the name of conscience to come to the aid of their religion by forming themselves into election coalitions for the purpose of repealing or forestalling any legislation aimed against her rights and liberties. This new phase of the Church's moral power, civil governments have not failed to notice. They have been willing to come to terms with the Holy See. More than half of all concordats recorded in the history of the Church have been concluded in the 19th and 20th century. Also more governments are represented through their ambassadors and envoys at the Vatican today than at any rime in the past. And so, while the sovereignty of the Church may he theoretically repudiated where separation of Church and State prevails, that sovereignty is often in fact acknowledged none the less.

In the United States wc have separation of Church and State. The Federal government is committed to this system in virtue of art. 6, sect. 3 of the Constitution: .Vo *religious test shall ever be required as a qualification to any office or public trust under the United States,* as also in virtue of the first amendment to the Constitution: *Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.* Due to our dual system of government these provisions are not binding upon the several States. As a matter of fact, however, similar provisions regarding separation of Church and State are found in the Constitution of every State of the Union.

American law, then, of necessity considers the Church nothing more than a voluntary association of members for religious purposes, with no inherent sovereign rights conferred by divine law. This same attitude is taken toward every other Church or sect. It is an ideal arrangement in view of the variety of religious beliefs professed by American citizens.

In the civil courts the Code of Canon Law represents the by-laws of a private corporation, supposing an ecclesiastical entity—diocese, parish, religious organization—has requested and obtained a charter of incorporation from the State. This is easily obtained. Where canon law contravenes civil law, it will be set aside by the civil court. Where such conflict is not found, the court will decide litigations on the basis of the canon law.

No one doubts that the Catholic Church in America enjoys greater freedom, or that her canon law finds a greater range of application here, than in any other country, including many so-called Catholic countries where the system of concordats prevails. This is due, not so much to the arrangement of separation of Church and State, as it is to the American concept of liberty. That concept contains two elements: 1) that the government should leave as large a liberty as possible to individuals and groups within the State, only intervening in the interests of morality, justice and the commonweal. and in this respect perhaps the concept docs not differ in principle from that entertained by other governments; 2) that the welfare of the State should not be considered menaced save in extremely few instances, and herein lies the difference betwen American and non-American liberty in practise, State totalitarianism being incompatible with the American concept of liberty. In virtue of this broad concept, the Church in America possesses her own schools, may acquire property generally without restriction, may administer the same without interference, her property is free from taxes, she is left undisturbed in the choice of her bishops and pastors, civil recognition is given to marriages performed by her clergy, religious Orders and Congregations obtain legal recognition with the same ease as any other private corporations, etc.

That conflicts arc possible between canon law and American civil law, and in fact do exist, no one can deny. But those conflicts are so few in number, and actual friction is so easily avoided, that so far we have found no need either of concordats, of Catholic political parties, or of diplomatic relations with the Holy See.

Although the civil government looks upon canon law as private law, yet all Catholics will continue to regard the commands of the Church as sovereign law. No Catholic worthy of the name will regard a merely civil marriage ceremony sufficient in his own case, although the State may consider it sufficient. Nor will the same Catholic citizen remarry during the lifetime of his former spouse, even though the civil law may permit this in the event he has secured a decree of civil divorce.

Chapter III

THE HISTORY OF CANON LAW

The Code of Canon Law has a history, from the viewpoint of its contents, which reaches back nearly 2,000 years. The codification, it is true, is a recent achievement, but the laws which have been codified are for the most part old legislation. Some of the laws, indeed, at least in their substance, were known already to the primitive Church.

Canon law originated in different parts of the world. Like civil law it usually passed from custom into written law. At first it was the church councils who framed the written law, then individual Popes, and in recent times, it has been the Roman Congregations.

Again, canon law, just like civil law, encountered many vicissitudes down through the ages. From time to time it had to be modified or even entirely abrogated in parts to harmonize with the changing conditions of society. And as the Church expanded outwardly, and developed inwardly, her laws were multiplied and grew more complex in nature. This continual change in the law called for new collections time and again. It is in the light of these collections that we best sec the growth and history of canon law as a legal system.

Some knowledge of these collections is essential to the student of canon law. While the Code has certain advantages over former collections, yet it is not entirely an unmixed blessing. The very brevity with which the lawgiver expresses his will in the Code often leads to obscurity concerning the true meaning of the law. It thus becomes necessary to revert to the former legislation time and again, and to read the former law in its original and lengthy text. To this end the Code carries some 26,000 references to the former legislation. Much of this legal material from the former collections has been gathered into nine large volumes by Cardinals Gasparri and Sercdi under the title *Codicis Juris Canonici Fontes.* It adds to the usefulness of this post-Code collection if the student has a general grasp of the development *of* canon law in its historical sequence.

Of the collections we shall now describe some are chronological,

others are systematic; some are genuine, others spurious; some authentic, others apocryphal; some are private, others are public, i. e., official collections.

Chronological collections are those which dispose the laws in the order of time in which they were enacted; *systematic* collections arrange them logically according to subject matter. *Genuine* collections contain only true laws; *spurious* collections contain fictitious laws, either wholly or in part. *Authentic* collections bear the name of the author who actually compiled them; *apocryphal* collections were not composed by the authors whom history or tradition claims to have been the authors. *Private* collections are those which, as collections, never received ecclesiastical approval, so that the laws which they contain have the same binding force, no more and no less, after their insertion into the collection as before. But *public* collections, since they have been approved by the Church as collections, cause all laws which they contain to be genuine and binding, even though some may have formed fictitious legislation prior to the compilation.

Since canon law was first developed in the East together with the development of the Christian Church in that part of the world, we shall consider the collections that grew up in Asia Minor before considering the later canon law of the Church in Western Europe. The West borrowed its canon law from the East in the early centuries of the Church, and this explains why our canon law has so many terms which are Greek in origin, e. g., *episcopus, diocesis, presbyter, patriarcha,* etc.

ART. I.

Collections of the Eastern Church.

During the first three centuries not much church law was elaborated. The Church being still in her infancy and Christians few in number, she had to struggle for her very life, what with persecutions from without and heresies from within. During these trying times the Church was governed mostly by the maxims of Holy Writ and some few rules given by the Apostles.

Pseudo-Apostolic Collections—Attempts to preserve these Apostolic traditions resulted in the so-called Apostolic Collections. These collections, however, are apocryphal ones, i. c., the Apostles were not really their authors, and this is shown from internal evidence. For they make mention of later institutions unknown to the Apostles,

such as choristers, lectors, annual provincial councils, parishes, etc. Still they are valuable historical documents insofar as the legal matter they contain is genuine law, and reflects the discipline in force at the time of the authors who wrote them.

The mostjmportant of those collections are: 1) the *Didache,* or *The Teaching of the Apostles,* composed toward the end of the first century; 2) the *Didascalici,* or *The Doctrine of the Apostles,* which dates from the second century'; 3) The *Ecclesiastical Canons of the Holy Apostles* (end of third century) ; 4) the *Constitutions of the Apostles* (beginning of the fifth century) ; 5) the *Canons of the Apostles* (completed in the sixth century).

The above collections contain general rulings on such subjects as: the celebration of Mass, the observance of Sunday, the election of bishops and deacons, requisites in the candidate for holy orders, the administration of church property, etc. Many rules, however, are more exhortator)' than mandatory in tone.

Fetus Codex------With the cessation of persecution in 313, the Church was free to grow, and to exercise her divinely conferred prerogatives. Soon the bishops convened in councils, both general and particular councils. Between 314 and 415 ten celebrated councils were convened, some of which were only regional councils. Yet the collection of the decrees of these ten councils came to be universally known and obeyed. The collection is known as the *Telus Codex Ecclesiae Universae.* The councils in question were held at: 1) Ancyra (314) ; 2) Neo-Caesarea (314; 3) Nice (315) ; 4) Antioch (341) ; 5) Gangrae (343) ; 6) Sardis (344) ; 7) Laodicea (343-381?); 8) Constantinople I (381); 9) Ephesus (431); 10) Calcedon (451). To the decrees of this collection were prefixed 85 Apostolic Canons referred to in the preceding paragraphs.

Collection of John, the Scholastic—This compiler was a priest of Antioch and later the patriarch of Constantinople. Because he was a member of a School of Lawyers he was surnamed the Scholastic. He composed around 500 A. I), a systematic collection *of* church law and divided it into titles. Besides some material found in the Vetus Codex, it carries 68 letters of St. Basil and 87 *capitula* from the Novels of Justinian. It is the first systematic collection, and the first civil-ecclesiastical collection, and for those reasons it is mentioned in all accounts of the history of canon law.

Trullan Collection—The Council of Trulla (691), although not an oecumenical council, made bold to order and authorize a collection of canon law destined for observance in the universal Church. It contained 85 Apostolic Canons, the *Fetus Codex* except-

ing the'decrees of Sardis, 102 canons of the Trullan Council itself, 133 canons taken from the IV Council of Carthage (419), and 147 canons gathered from the writings of the Eastern Fathers.

Collection of Photius—Photius, the usurping patriarch of the See of Constantinople, is known as the father of the eastern schism. About the year 883 he compiled a collection of church law of his own which embodied all the material of the Trullan Collection just mentioned. In addition he inserted 22 canons of the II Council of Nice (787), and 20 canons of the two pseudo councils at which he presided. His collection in its second part is what is called a nomo-canon, i. e., civil legislation concerned with ecclesiastical matters.

After the death of Photius no new collections appeared in the Eastern Church, and its canon law thereafter remained stationary. The schismatic churches are governed by his law today.

ART. II.

Collections of the Western Church

The history of canonical legislation in Western Europe falls conveniently into three periods: I) from the beginning until the Decree of Gratian (1151); 2) from then until the Council of Trent (1545) ; 3) from Trent until the Code of Canon Law (1918).

SI. From the Beginning to the Decree of Gratian

In the beginning the Church in the West, too, was governed mostly by the teachings of Scripture and by Apostolic traditions. Gradually the *Fetus Codex* of the East became known and its legislation adopted.

Canon Law in the Church of Africa—It was not until the sixth century that the *Fetus Codex* became known to the Christian community in northern Africa. Up until then several local councils were held, especially at Carthage, the 17th being convened already as early as 419. Each subsequent council was wont to confirm the rulings of the preceding councils so that there grew up a body of local legislation binding throughout the African Church. Their decrees form a collection of law which is known as the *Code of Canons of the African Church.* This Code became renowned throughout the whole of Christendom. In the East many of its canons were embodied, as wc saw, in the Trullan collection, and thus found their way into the Collection of Photius, so that even today they constitute a large portion of legislation for the Greek Orthodox

Church. Also in the West, first through inclusion in the Dionysian collection, later through the medium of the Spanish Collection, and lastly through the pscudo-Isidorian Collection, they became universally known and respected.

About 546 the Eastern canons were introduced into the Church of Africa through a private systematic compilation known as the *Breviatio Fulgentii Ferrandi,* composed by a deacon of that name at Carthage. Later in 690 there appears another systematic collection of Eastern canons by Cresconius, probably an African bishop, which is known as *Concordia Canonurn Cresconii.* With the Mohammedan invasion in the eighth century, the Church in Africa was practically annihilated. At any rate, it produced no more worth while legislation thereafter.

The Dionysian Collection—About the year 500 a Sythian monk, Dionysius the Little, *(Dionysius Exiguus)* so named either because of his stature, or his humble disposition, composed at Rome a Latin version of the Eastern canons taken from the *Fetus Codex.* It is a chronological work and is divided into two parts: Part I contains 50 Apostolic Canons, and more than 200 canons taken from the *Fetus Codex* and from the African councils; Part II contains papal decretals dating from Pope Siricius (384-398) to Pope Anastasius (496-498).

The collection soon became popular not only in Rome and Italy but throughout the whole Church. From it all later Latin collections drew their material in great part. It excelled all subsequent Latin versions in respect to fidelity* of translation, arrangement of contents and genuiness of documents.

Spanish or Isidorian Collection—Like the Church in Africa, the Church in Spain was governed from the very beginning by its own synodal laws, those of Toledo enjoying a certain preeminence over all others. After the Eastern and African collections were introduced into Spain, their canons together with the Spanish canons were approved as law for the whole of Spain by the IV Council of Toledo in 633, being called the *Collectio Hispanica.* The collection underwent several revisions largely through the addition of new local legislative material. Because its preface contains certain excerpts from the writings of St. Isidore of Seville (died 636) it continued for a long time to be ascribed to this saint under the title *Collectio Isidoriana.* With the invasion of Spain by the Moors in the eighth century we find no new Spanish collections thereafter.

Collectio Dionysio-Hadriana—The Church in France and Germany had no centralized sec from the beginning such as Carthage

was to Africa and Toledo to Spain. Hence, canonical legislation in the Frankish kingdom was not national in character, but rather the product of local synods. However, in 774 Pope Adrian presented Charlemagne with an enlarged copy of the Dionysian Collection. It is known as the *Collectio Dionysio-Hadriana,* or simply the *Collectio Hadriana.* The enlargement consisted of the addition to the original Dionysian Collection of decretals from Pope Anastasius to Pope Adrian (498-774). In 802 Charlemagne caused the Adrian collection to be promulgated at the Diet of Aix-la-Chapellc as canon law for the entire Holy Roman Empire.

English and Irish Collections—These countries at first were governed solely by the canons of Nice and their own local councils. In the sixth century the Dionysian collection was brought to England. In the seventh and eighth centuries there appeared systematic collections in both countries, of which three deserve mention: 1) the *Collection of Theodore,* Bishop of Canterbury (673), being a compendium of the Dionysian Collection; 2) the *Collection of Egbert,* Archbishop of York (750), being a still larger compendium of the same Dionysian Collection; 3) the *Irish Collection* of an unknown author about the middle of the eighth century. This last became famous both in France and Italy, the compilers of these countries drawing largely therefrom. The material of the Irish Collection is taken from the Scriptures, the Eastern and Western Fathers, the Councils of the East, and the synods of Rome, France, Ireland and Wales.

Pseudo-Isidorian Collection or the False Decretals—The ninth century was notorious for spurious and apocryphal collections. Chief among these was the Pseudo-Isidorian Collection, called also the False or Forged Decretals.

This must not be confused with the Spanish Collection which in the course of time was also falsely ascribed to St. Isidore, and which originated in Spain in the seventh century, as we have seen, but which is called simply the Isidorian, not Pseudo-Isidorian, Collection. The present collection under discussion was composed by an unknown author between 847 and 857 either in the Province of Rheims or Tours (France). For centuries after it appeared, it was ascribed to St. Isidore of Seville from the fact that in the preface the author speaks as follows: *Incipit praefatio S. Isidori, Episcopi. Isidorus, Mercator, servus Christi,* etc.

The work is not only apocrypal but it is also spurious. Part I contains 50 Apostolic Canons, and 60 forged decretals purporting to have been issued by sundry Popes from the pontificate of Clement

(88-97) to that of Melchiades (310-314). To this is added the forged Constitution of Constantine, also called the Donation of Constantine, for by it large privileges and vast estates, described therein, were supposed to have been conferred on Pope Sylvester (314-335) and the Roman Church. Part 11 contains the collection of councils up to 619 as found in the Spanish Collection. Part III exhibits the genuine decretals as found in the same Spanish Collection from St. Sylvester (314) to Gregory, the Great (715). To these the author added 30 false decretals forged by himself.

The fraud was not discovered until the 15th century. It was perhaps the first work subjected to the historical research for which this century is so rightly honored. When the False Decretals appeared books were few, and compilers were altogether too eager to accept any new material for their collections, without questioning its authenticity. Add to this the implicit confidence a work reputed to have come from the pen of the saintly and learned Bishop of Seville was likely to inspire.

The spurious character of the decretals appears: 1) from the unanimous silence of the councils concerning them prior to that date, whereas had they been genuine we should expect some conciliar mention of them already in the fourth century; *2)* from their scriptural citations, which now are known to have been taken from Latin versions of the Bible of the eighth century; 3) from citations of the fathers and Councils in said decretals, but which Fathers wrote, and Councils legislated, posterior to the purported date of the same decretals; 4) from the monotonous uniformity of style in which the decretals are composed, showing thereby the work of one man, whereas one would expect more variety in letters supposed to have been issued by different Popes;) from their crude latinity which was characteristic of the ninth century, whereas a more classical Latin should have distinguished the earlier decretals.

The purpose of the author in forging these decretals seems to have been the emancipation of the bishops from the domination of civil rulers and provincial councils. At that time, particularly in the Empire, it seems that the bishops were completely at the mercy of the civil authorities. These latter, when they desired the removal of a bishop, readily brought their influence to bear on the archbishop and the provincial council. The author proposed to prove: 1) that no bishop could be deposed solely by the archbishop; 2) that the sentence of even a provincial council in criminal cases against bishops was not final until confirmed by Rome. To this end he fabricated a number of decretals.

Although more widely circulated and consulted than perhaps

any other collection up to this time, it would be erroneous to conclude with the Protestants that the Forged Decretals materially changed the constitution *of* the Church from a society in which the universal episcopate enjoyed supreme jurisdiction to that of a papal monarchy. This is not the place to argue that prior to the ninth century the primacy of the Roman Bishop had been generally acknowledged throughout the West, even though that doctrine still needed further elaboration. The influence of the Forged Decretals, at the most, lay in the *hastening* of the *explicit* recognition by the Church of the Pope's sovereignty.

Systematic collections between the 10th *and* 12th *centuries*—The Pseudo-1sidorian collection was so complete in the quantity of its material, that it seemed idle to compile any further chronological collections. Moreover, particular synodal laws had multiplied to such vast proportions that it became increasingly difficult to discover the law in collections arranged chronologically. Attention, therefore, was directed to the composing of systematic collections henceforth. These collections dominate the 10th, 11th, and 12th centuries. At first crudely gotten up, they gradually came to reveal more scholarship, the authors adding observations and comments to the legal texts. Thus was paved the way, and thus were furnished the sources, for the famous Gratian Decree.

§2. From the Decree of Gratian (1151) to the Council of Trent (1545)

Up to now ecclesiastical legislation had been chiefly the product *of* councils, whether general or particular councils. Papal Jaw had assumed only a minor role. This was due less to lack of explicit recognition of papal sovereignty than to the fact that the various parts of the Church were more or less isolated from one another, as also from Rome, due to the absence of ready means of communication in those days. Add to this the almost constant civil disturbances in the Papal States, particularly at Rome, the conflict over investitures, and the scandalous lives of certain successors of St. Peter. But after Gregory VII (1073-1085) proved victorious in his conflict with the Emperor over the question of investitures, we sec the papal power rising until it reaches its greatest height under Innocent III (1198-1216). The spiritual supremacy of the See of St. Peter which had hitherto lain dormant, though not unacknowledged, finally freed itself from the domination of civil rulers. The authority which had before been acknowledged only in theory for the most part, could now be also exercised in practise. And so, during this period up to the Council of Trent, common law becomes mainly papal law, and the legislation of the councils wanes.

The legislation of this epoch is contained in the *Corpus Juris Canonici,* this being a composite of six distinct compilations: 1) the Decree of Gratian ; 2) the Decretals of Gregory IX ; 3) the Decretals of Boniface VIII; 4) the Constitutions of Clement V; 5) the Decretals of John XXII; 6) the Decretals called *Extravagantes Communes.*

The Decree of Gratian (Decretum Gratiani)—Gratian, a Benedictine monk of the Camaldulese Congregation, composed at Bologna, Italy about the year 1151 a work which he entitled *Concordantia Discordantium Canonum,* but which later was called by his disciples *Decretum Gratiani.* In those days any large collection of canons was called a decree.

As appears from the author's title, the work was an attempt to harmonize the many seemingly conflicting church laws of his time. Though several systematic collections were then in use, these were neither complete, nor well arranged, nor exclusive of contradictory canons. Gratian's collection excelled all previous ones in that it was systematic, complete, scientifically arranged, well authenticated, and free of contradictions.

The Decree is divided into three parts. Part I which treats of the sources of law and of clerics in general, is divided into 101 *distinctions,* and these are subdivided each into *canones.* Part II which treats of trials, the temporal goods of the Church, regulars, marriage and penance is divided into *causae,* or titles, these in turn being subdivided into *quaestiones,* and these again into *canones.* Part HI treats of the sacraments and sacramentals, is entitled *De Consecratione,.and* is divided into five *distinctions* with subdivisions into *canons.*

The Decree is more than a mere compilation of laws; it is a scientific treatise as well. The author first states a general principle of canon law *(distinctio).* He then proceeds to confirm this by authorities *(canones)* taken from the Scriptures, the Fathers, councils, papal decretals, capitularies of the Frankish kings and from the Roman law. After this he develops the general principle by raising questions of law *(quaestiones)* which the principle logically suggests, and these again are answered and confirmed by further authorities *(canones).* Apparent conflicts between authorities are explained away by notes which are now called *dicta Gratiani.* In these the author points out, e. g., that one canon forms the rule, the other the exception ; one contains a precept, the other a counsel ; one is general law, the other particular law; one proceeds from a higher, the other from a lower authority, etc.

Gratian's Decree soon became the popular textxbook of the

schools, and the code of the ecclesiastical courts. Its greatest merit consists in having given a renewed impetus to the scientific study of church law. Henceforth, canon law is divorced from moral theology, and becomes a separate branch of study. The University of Bologna becomes a center of learning for students from all parts of Europe who repair thither to study both canon and Roman law. Commentators on the Decree *(Decretists)* usher in the golden age of canon law with their *glossae, apparatus, summae, repetitiones,* etc.

Yet despite its popularity, the Decree always remained a private collection. Hence, whatever laws are found therein have only that authority which they possessed prior to their insertion into the collection. If they were general laws before, they remain so now; if particular, they remain particular; if spurious, they remain spurious, etc.

In the source references as found in the Code, the Decree is cited as follows: Part I. e. g.: c. 3, D. XXIII, i. e. Distinction 23, canon 3. Part 11, e.g.: C. VII, q. 1 ; c. 18; i.e., Cause 7, question 1, canon 18. Part Ill, e.g.: c. 49, D. I., *de cons.,* i.e.; Distinction 1, canon 49 of the third part of the Decree entitled *De Consecratione.* The abbreviation *de cons,* must be added to indicate that the reference is not to Part I.

Decretals of Gregory IX (1227-1241) *(Decretales Gregorii Noni)*—Between 1151 and 1227 (the first year of Gregory the Ninth's pontificate), a vast number of decretals had appeared. These were written answers to questions of law submitted to the Pope for decision, and although directed to an individual bishop, were considered binding in analogous cases. Also two general councils had been held during this time: Lateran III (1179) and Lateran IV (1215).

Pope Gregory commissioned the Dominican friar, Raymond of Penafort, himself a canonist of note, and later canonized, to gather this new legislation into a systematic compilation. Completed in 1234, the work was formally approved as a collection by the Pope, and came to be known as the Decretals of Gregory IX, more from his being its originator than from any other cause, for, in addition to the decretals of Gregory, it contains the decretals of his eight predecessors issued subsequent to the Decree of Gratian, quotations from the Scriptures and the Fathers, the canons of the two Lateran Councils just mentioned, and certain pre-Gratian laws not found in the Decree.

The Gregorian Decretals, therefore, constitutes the first public collection of canon law in the history of the Church. It was also an

exclusive collection. According to many authors it abrogated all prior general laws not contained therein, or in the Decree. Hence, all pre-Gratian collections became thereby automatically obsolete. The Code seems to bear out this contention, for the source notes found therein do not antedate the Decree of Gratian.

The Gregorian Decretals is divided into five books, these into titles and the titles into chapters. The five books treat respectively of: 1) prelates and their jurisdiction; 2) procedural law in civil cases; 3) clerics in general; 4) marriage; 5) criminal and penal law. The entire arrangement is expressed in the verse: *Judex, judicium, clericus, connubia, crimen.* This arrangement was an improvement over the system adopted by Gratian. It was followed generally up to our times by commentators, called decretalists, who produced *glossae, apparatus, repetitiones* after the manner of the decretists.

The work is cited in the Code footnotes as follows, e.g., c. 7, X, *de electione et electi potestate,* I, 6, i.e., Book I, Title 6, Chapter 7. The capital "X" indicates that reference is to the Decretals of Gregory IX, it being an abbreviation of *extra* or *extravagantes,* for originally the work was called *Extravagantes Decretales Gregorii* IX, since it contained the decretals wandering, as it were, outside of the Gratian Decree. The words in *italics* are the rubric, or the title.

Decretals, or Liber Sextus of Boniface VIII (1294-1303)—This, like the Gregorian Decretals, is a public collection, having been approved as such by Boniface VIII who authorized its compilation. It contains the canons of Lyons I (1245) and Lyons II (1274), together with the decretals issued subsequent to the publication of the Gregorian Decretals (1234) and up to the year 1298.

Intended primarily as a supplement to the Gregorian Decretals, the work is usually designated by the title: *Liber Sextus Bonifacii Octavi,* a continuation, as it were, of the five books of the former collection. Nevertheless, it is an independent work, being itself divided into five books, these into titles, and these again into chapters. It is cited by Cardinal Gasparri as follows: e. g.: c.4, *de temporibus ordinationum et qualitate ordinandorum,* 1,9 in Vio; i.e., Book I, Title 9, *de temporibus,* etc., chapter 4.

The Clementines or Constitutions of Clement V (1305-1314) *(Clementinae)*—This is a collection begun by Clement V, but due to the political conditions of the times (Clement was the first pope of the so-called Babylonian Captivity), it was officially promulgated only after his death by John XXII. It is therefore a public collection.

It contains the constitutions of Pope Clement, the majority of which were enacted at the Oecumenical Council of Vienne in France (1318) at which the Pope himself presided. It carries also one constitution of Boniface VIII, and one of Urban IV.

The Clementines is divided into five books, these into titles and chapters. It is cited by Cardinal Gasparri as follows, e. g.: c. 2, *de judiciis,* II, 1, in Clem.; i.e., Book II of the Clementines, Title I, *de judiciis,* chapter 2.

Extravagantes Johannis XXII (1316-1334)—Because John XXII never authorized a public collection of his own decretals, 20 of them were gathered, nevertheless, into a private compilation under the title: *Extravagantes Johannis XXII,* because they were not to be found in any previous official collection. This happened in 1325. In 1500 John Capuis after arranging these decretals into a logical order under 14 titles and 20 chapters (there was no division into books for paucity of material), incorporated them into his edition of the Corpus Juris Canonici. The work is cited in annotated editions of the Code thus, e. g.: c. un. *de poenis,* tit. XII, in Extravag. Joan. XXII; i.e. Title 12 of the Extravagants of John XXII, the sole chapter entitled *de poenis.*

Extravagantes Communes (1294-1484)—This is a private collection of 70 decretals of several Popes *{communes')* from Boniface VIII to Sixtus IV, but not found in any previous official collection *(extravagantes).* Having gathered these decretals, John Capuis in 1500 distributed them into books, titles and chapters, omitting Book IV for want of matter. To this collection he gave the name *Extravagantes Communes.* He then embodied it into the Corpus Juris Canonici. The collection is cited in the Code as follows: c. g. c.2, *de reliquiis et veneratione sanctorum,* III, 12, in Extravag. com., i.e., Book-111 of the Extravagantes Communes, Title 12. *de reliquiis,* etc. chapter 2.

Corpus Juris Canonici- In general *corpus juris* signifies a complete collection of laws. In particular it means a composite of collections. Thus the Corpus Juris Civilis comprised the four collections of the Roman law: the Pandects, the Code, the institutes and the Novels.

In canon law the term was first applied to the Dionysian Collection, later to the Decree of Gratian, after that to the three public collections of this period. In 1500 John Capuis, a Parisian editor, published as one work under the title of Corpus Juris Canonici, the Decree of Gratian, the three public collections: Gregorian Decretals, Liber Sextus and Clementines, and to these he added by way of

appendices the two above collections of Extravagant Decretals. In 1580, after the *Correctores Romani,* to whom had been assigned the task of revising the text of these collections, had completed their work, Gregory XIII by the Brief, *Cum pro munere,* at one and the same time both approved the text as official, and authorized the name *Corpus Juris Canonici* to designate the six collections of this period. In so doing the Pope merely declared the Roman edition of the text to be official, so that it could be safely followed by the courts. The Corpus as a whole acquired no authentic character. Consequently only the Gregorian Decretals, the Liber Sextus and the Clementines arc public collections; the others remaining private compilations, despite their insertion in the Corpus Juris Canonici.

Several editions of the Corpus Juris Canonici have since appeared. Some contain the authorized Roman text, others do not. Of the unauthorized editions some appear with glosses in three volumes, others without glosses in two volumes. The best critical edition of recent date, though without glosses and of private authority, is that published by Richter-Friedberg (Leipzig, 1922, 2 cd. 2 vol.).

§3. From the Council of Trent (1545-1563) to the Code (1918)

After the death of Sixtus IV" (1483) until the Council of Trent no new collections of canon law, cither public or private appear. Wc, therefore, may assign the beginning of this third epoch to the legislation of Trent.

From now until the promulgation of the Code, the sources of ecclesiastical law arc: the Council of Trent, papal constitutions, and the decrees and decisions of the Roman Congregations. The Vatican Council (1869-1870) enacted no laws, but was able to frame only two dogmatic constitutions, when it was forced to adjourn due to the occupation of Rome by the Italian troops.

DECREES OF THE COUNCIL OF TRENT—The object of this council was two-fold : to purify the true faith of Protestant errors, and to reform ecclesiastical discipline. The Council sat through 25 sessions, but not all of these enacted laws. Those sessions which occupied themselves both with doctrine and legislation arc divided into two parts: the first being doctrinal, e. g., concerning the number and nature of the sacraments, the nature of faith, the existence of purgatory, the licitness of the veneration of saints, and other points of Catholic doctrine which had been assailed by the Protestants. Part II of the sessions, inscribed *Decreta de reformatione,* was again divided into distinct chapters touching upon various points of church law. Hardly any canonical institution escaped some

revision. Of special interest was session 24 on marriage which contained the famous decree *Tametsi,* and session 25 on regulars.

The Tridentinc Decrees constituted the most important source of canon law during the last four centuries. They were profusely cited in all text books. However, no authentic collection of these decrees was ever authorized and thus made an official or public collection. But there have been several private collections, the most popular perhaps being that entitled *Canones et decreta Concilii Tridentini* by Schulte-Richter (Leipzig, 1853). The notes of the Code refer to the Council as follows, e. g.: Cone. Trident., sess. XXIV, *de matrimonio,* can. 7.

PAPAL CONSTITUTIONS, BULLARIA— After the Council of Trent, the Popes no longer found it necessary to issue decretals explanatory of the law. Doubts were still to arise, of course, but the function of interpreting doubtful laws was committed to the Roman Congregations, especially to the Congregation of the Council. These Congregations were organized by Sixtus V in 1587.

During recent centuries papal legislation, in the formal sense, has been confined to the issuing of constitutions. Since these are always given in the solemn form of a Bull, collections of papal constitutions have come to be called *bullaria.*

The only public Bullarium is that authorized by Benedict XIV containing the constitutions of this Pope during the first six years of his pontificate. All other collections of papal constitutions or bullaria, are private. In addition to the constitutions, the bullaria contain other papal acts, e. g., decretals, letters, encyclicals, etc., not only of the more recent Popes, but some reach back to the first centuries of the Church. The Bullarium most common in use is that called the *Magnum Bullarium Romanum* published by Jerome Mainardus and Charles Cocquclincs (1733-1762). In its present form it consists of 32 volumes, and contains papal letters and acts from Leo the Great, (440-461) to the death of Benedict XIV (1758). The *Bullarii Romani Continuatio* was intended as a supplement to the Magnum Bullarium Romanum. Edited at Rome between 1835 and 1857, it contains papal acts from Clement XIII (1758-1769) to Pius VIII inclusively (1830).

The laws and letters of recent Popes from Gregory XVI (1830-1846) to Pius X (1908) are found in private collections; *Acta Gregorii XVI* (Rome, 1901-1904; 4 vol.) ; *Acta Pii IX* (Rome, 1854, *sq. 9* vol.); *Acta Leonis XIII* (Rome, 1881-1905, 24 vol.) ; *Acta Pii X* (Rome, 1903-1908, 5 vol.). Thereafter all papal acts are published in the official Commentary of the Holy See, issued

monthly at Rome under the title: *Acta Apostolicae Sedis,* which was begun in 1908 by authority of Pius X, so that at present it runs to 39 vol. (1947).

Papal constitutions are cited in the notes of the Code by reference to the Pope, the initial words of the constitution and the date, thus, e.g.: Gregorious XIV' const. *"Onus Apostolicae,"* 15 May, 1591.

COLLECTIONS OF THE ROMAN CONGREGATIONS—The decrees and decisions of the Roman Congregations were also gathered into collections, some of which arc public, others only private collections.

1. *Thesaurus Resolutionurn Sacrae Congregationis Concilii* in 167 volumes. The collection contains the decisions of this Congregation from 1718-1908. Though not authentic, it may be called quasi-official and public, having been uninterruptedly edited under the supervision of the secretaries of this Congregation.

2. *Collectanea in usum secretariae S. C. Episcoporum et Regularium.* This collection of a private character contains some select decrees of the Congregation of Bishops and Regulars which was suppressed and replaced in 1908 by the present Congregation of Religious. The collection was edited twice by A. Bizarri at Rome (1863, 1885).

3. *Collectanea S. C. de Prop. Fide.* This is a public collection of the decrees of the Congregation of rhe Propaganda, although it contains decrees of other Congregations as well. The first edition is systematic and in one volume (Rome, 1893), the other is chronological and in two volumes (Rome, 1907).

4. *Decreta authentica Congregationis Sacrorum Rituum* is an authentic or public collection of the decrees (decisions) of the Congregation of Rites. Edited at Rome, 1898, in five volumes by authority of Leo XIII, it has since been enlarged by the addition of two volumes: Appendix I (Rome, 1912) ; Appendix II (Rome, 1927).

5. *Decreta authentica S. C. Indulgentiis sacrisque Reliquiis praepositae ab a.* 1668-1882, *edita jussu et auctoritate SS. D. N. Leonis Papae* XIII. As the title indicates this is a public collection of the decrees of the Congregation of Indulgences and Relics. The Congregation no longer functions, its duties having been taken over by the S. Penitentiary so far as concerns indulgences, and by the Congregation of Rites as far as concerns relics.

6. *Index librorum prohibitorum Leonis XIII Summi Pontificis auctoritate recognitus, S. D. N. Pii Papae XI jussu editus.* A public

collection of the decrees of the Congregation of the Index, revised and brought up to 1924. It is an authentic collection of prohibited books. An authorized English version of the second edition has been published. The Congregation of the Index was suppressed in 1917, its jurisdiction having been transferred to the Holy Office.

One refers to the decrees and decisions of the Congregations in this manner: first the abbreviated name of the Congregation is given, then the abbreviated name of the diocese involved, then the date of issuance, thus: S. C. C., *Reatina,* June 3, 1592; S. C. R., *Aquen.,* Mar. 3, 1761 ; S. C. S. Off., *Neo-Eboracen,* Aug. 4, 1877, etc.

Collections of Church Councils—The history of the Church, i. e., the life and activities and status of the Church at any particular period of the past can be gleaned from the legislation of general councils during that period, or of national councils if there is question of learning the customs and conditions that prevailed in some particular nation.

In the same way the student can sec the development over a long stretch of time through which this or that particular juridical institution has passed which might be of interest to him, e. g., the history of clerical celibacy, of Mass stipends, of the exemption of regulars, etc.

Fr. John Harduin published one such collection of council acts at Paris in 1715. It comprises 12 volumes and brings the legislation up to 1714. The work is entitled *Acta Conciliorum et Epistolae Decretales ac Constitutiones Summorum Pontificum.*

Archbishop Mansi began a similar collection of council legislation, which was continued by others after him, so that up to 1927 it comprised 57 volumes under the title: *Sacrorum Conciliorum Nova et Amplissima Collectio.*

AMERICAN CANON LAIP—A country can have its own canon law besides being governed by the common law. The particular laws will be found as a rule to consist of laws enacted by national councils, provincial councils and diocesan synods.

In the United States wc have had three plenary, i. e., national councils, all held at Baltimore, one in 1852, another in 1866, the third in 1884. The acts of the 2nd and 3rd plenary councils, which alone were important from the viewpoint of legislation, have been published by John Murphy Co., Baltimore.

The Holy See has given us special constitutions and decrees in the past to meet the conditions peculiar to our country in cases where the common law could not be observed. Thus, at one time we followed a procedure of our own in the civil and criminal cases of

clerics; and again we have a method of our own for recommending to the Holy See candidates for vacant bishoprics.

So, too, wc have customs particular to this country which often originated with the early missionary conditions of America, and which have been tolerated by the Holy See, even though they sometimes militate against the common law. Thus, priests in this country do not wear the clerical tonsure. Another example is the practise of our bishops of imposing an annual assessment on their parishes, called the cathedraticum, for episcopal support. According to common law this assessment must be a very trifling offering, and made rather in token of the bishop's jurisdiction, not for his maintenance; and it must be the same in amount for every parish. With us the tax varies in proportion to the income of the parishes taxed.

Induits and privileges might be reckoned as forming part of national law. We have a few such induits granted by Rome, e. g., the privilege of transferring the Saturday abstinence in Lent to Wednesdays; another is the extension of the Easter season from the first Sunday of Lent to Trinity Sunday; another is the reduction of holydays of obligation, these being fewer with us than arc prescribed by the common law.

Finally, there arc the habitual faculties of the Apostolic Delegate, and of the American Bishops, which, insofar as they can modify the common law through dispensations, should be considered as an clement in creating particular law.

Chapter IV

THE CODE OF CANON LAW IN GENERAL

Before approaching our study of the legislation contained in the Code, it may be well to make some observations concerning: 1) the origin of the Code; 2) its material arrangement; 3) its authority and binding force; 4) canonical literature and commentaries on the Code.

ART. I.

Origin of the Code

At the time of the Vatican Council, which convened in 1869, the Church had for nearly four centuries lacked a complete collection of her laws. After the *Corpus Juris Canonici was* edited in 1500 various contemporary collections had indeed been compiled, but these were neither complete nor public, i. e., authoritative collections.

Accordingly, the Catholic hierarchy urged upon the Vatican Council that it authorize a complete systematization of existing church law. 1'he reasons for the request arc thus summarized by Benedict XV: "In the passing of centuries a great many laws had been issued, of which some had been abrogated by the supreme authority of the Church, while others had fallen into desuetude; some had proved too difficult to enforce in view of changed conditions, others were not likely to conduce to the common good. Moreover, ecclesiastical laws had become so numerous, while at the same time so scattered throughout various compilations that many remained unknown not only to the faithful at large, but even to the most eminent scholars" (cfr. Bull of Promulgation which prefaces the Code).

Due, however, to the occupation of the city of Rome in 1870 by the Italian troops, the Council adjourned without taking action upon the proposed collection. It was left to Pius X to begin the codification, and this he did through a *Motu proprio* issued March 19, 1904. In this document the Pope outlined the general method of work: a

special commission of cardinals was appointed to supervise the codification; they were to be assisted by a body of able theologians and canonists acting in the capacity of consultors, and these in turn were to be assisted by other ecclesiastics as collaborators; moreover, the cooperation of all the bishops of the world, and of all Catholic university faculties was solicited.

As the various Books of the Code gradually appeared, copies thereof were sent to each bishop of the world and to the supreme head of every clerical exempt religion for their study and comments. On the basis of their animadversions the Code was repeatedly modified in many of its parts. Finally, on May 17, 1917, the completed Code was officially promulgated by Pope Benedict XV through the Apostolic Constitution *Providentissbna Mater Ecclesia.* That all might have adequate opportunity to become acquainted with its contents, the Pope decreed that the new Code was not to go into effect until May 19, 1918, i. c., one year later.

Following the example of his predecessor Pius IV, who had created the Congregation of the Council to interpret authentically the decrees of the Council of Trent, Pope Benedict XV on Sept. 15, 1917, issued a *Motu proprio* entitled *Cum juris canonici* in which he created the *Pontifical Commission for the Authentic Interpretation of the Canons of the Code.* This was to be a body of cardinals assisted by learned canonists, all to be appointed by the Roman Pontiff whenever vacancies occurred.

ART. II.

Material arrangement of the Code.

The Code of Canon Law is officially entitled: *Codex Juris Canonici Pii X Pontificis Maximi jussu digestus, Benedicti XV auctoritate promulgatus.*

It is divided into five books. Excepting Book I. each book again is subdivided into parts, these into sections, these into titles, chapters, articles, canons, paragraphs and numbers. But since the canons run consecutively from 1 to 2414, it suffices, when citing the Code, to simply mention the pertinent canon.

The canons themselves arc short sentences. These state the law in a general way without narrating the history of the law, or adding reasons for the enactments. In this respect the new collection is a code rather than a compilation of laws transferred bodily from for-

mer collections, such as the Gratian Decree was, and practically all prc-Code collections.

The entire legal matter of the Code is distributed as follows: Book I, *On General Norms;* Book II, *On Persons;* Book III, *On Things:* Book IV, *On Processes;* Book V, *On Offenses and Penalties.* This division, it may be noticed, coincides with the one employed generally in the pre-Code manuals of canon law. But it differs radically from the system of the decretals, namely: *judex, judicium, clericus, connubia, crimen.* Therefore, when consulting the works of the decretalists that difference must be borne in mind. The simplest method when consulting those writers would be to ascertain from the footnotes of the Code the source of the canon under consideration, and having discovered the Book and Title of the Decretals, refer to the Decretalist commentator under that Book and Title.

Inserted in the Code besides the canons proper are: 1) a table of contents; 2) an historical preface, both of these by Cardinal Gaspard; 3) Pope Benedict's Bull of Promulgation of the Code; 4) the Motu proprio, *Cum juris canonici;* 5) the formula for the profession of faith; 6) eight papal constitutions carried over bodily from the former law, the first three of which refer to papal elections, the fourth to the concursus examination for parish appointments, the fifth to the crime of solicitation, the remaining three to the use of the Pauline Privilege in certain pagan countries; 7) (in recent editions) the Motu proprio, *Cum proxime, of* Pius XI extending the period for beginning the conclave; 8) an analytical index by Cardinal Gasparri.

Some editions of the Code are annotated, i. e., they carry approximately 26,000 references to pre-Code sources by way of footnotes. These being also the work of Cardinal Gasparri, are, like the preface and the analytical index, devoid of legal value. The original documents in their entirety which constitute the sources of the Code's footnotes were all gathered into nine large volumes by Cardinals Gasparri and Serédi under the title: *Codicis Juris Canonici Fontes.*

ART. IIL

The authority of the Code.

In general we may say that the Code is a complete, authentic, universal and exclusive collection of the common law prevailing at present in the Church. The Code is a *complete* collection in the

scuse that it carries *all* the general laws now in force. It is an *authentic* collection in the sense that all laws contained therein are genuine, it having received its authenticity from the Benedictine Bull: *Providentissima Mater Ecclesia.* It is a *universal* collection in the sense that it is a compilation of *general* laws, not of particular legislation. The latter is to be found mostly in the collections *of* the decrees of particular councils. The Code, finally, is an *exclusive* collection in the sense that general laws not found therein must be considered as abrogated. This amounts to saying again that the Code is a *complete* collection.

However, the first six canons of the Code limit somewhat its binding force, or authority. That is to say, the Code is not the final law when there is question of: 1) Oriental Catholics; 2) liturgical matters; 3) concordats; 4) pre-Code acquired rights, privileges and induits; 5) certain pre-Code customs; 6) certain pre-Code laws. Let us look into each point more closely.

The Code and the Oriental Church (c. 1.)—Since the 15th century when certain Oriental schismatic sects returned to unity with the Holy See, the Roman Pontiffs, partly to encourage further returns, partly to show their respect for ancient customs and practices, permitted the converted sects to retain their own liturgy and discipline. Unity in the Church of Christ is essential only with respect to faith and morals. Hence, although at times it makes mention of the Oriental Church, the Code is chiefly binding on the Latin Church. Only in two cases must Orientals follow the Code: 1) when a canon merely restates the divine law, e. g., the law on the prohibition of books; 2) when a canon expressly refers to the Orientals. Otherwise, Oriental Uniates continue to be governed by their own laws, although at times, especially for Orientals living in the West, the Holy Sec may legislate for them by extra-Code decrees. Concerning Oriental schismatics cfr. p. 91.

The Code and liturgical laws (c. 2)—Generally speaking, the Code does not legislate in matters of rites and ceremonies. These, therefore, must be sought in the approved liturgical books, namely: the Missal, Ritual, Breviary, Pontifical and the Ceremonial of Bishops. Add, as a source of liturgical law, the seven volumes of the *Decreta authentica Congregationis Sacrorum Rituum.* Liturgical laws being so numerous, the reason for their exclusion from the Code is evident. Sometimes, however, especially in Book III, liturgical matters are touched upon, and if modified by the Code, take precedence over the pre-Code liturgy on the points so modified.

The Code and concordats (c. 3)—Concordats are solemn agreements between the Roman Pontiff and the civil ruler concerning matters of mutual interest to both high contracting parties. The object of these agreements is to avoid conflicts and disputes in matters falling within the twilight zone of both jurisdictions. The result often is a modification of the common law of the Church for the particular country in question, e. g., a reduction in the number of holydays of obligation, participation by the civil ruler in the appointment to vacant dioceses, etc. Concordats existing at the time of its promulgation were in no wise affected by the Code, even though they contained provisions which conflicted with the canons of the Code. The reason is that the Roman Pontiff was bound by a bilateral contract, which he was not at liberty to violate by reason of the new Code of Canon Law. In the United States the common law suffers no modification on this score, concordats between our government and the Holy Sec being non-existent.

The Code and acquired rights, privileges and induits (c. 4)—Pre-Code acquired rights were not revoked by the Code, unless this is expressly stipulated in some canon. We may define an acquired right to be a right which is obtained automatically by placing an act in conformity with the law in force at the time of the performance of the act. Thus, under the old law a deacon could be appointed pastor, although under the law of the Code the cleric must be a priest to obtain title to a parish. If, therefore, a deacon had been appointed to a parish shortly before May 19, 1918, and although he had not yet been ordained to the priesthood on that day, his title to the parish would not have been lost. The reason for the retention of acquired rights lies in the non-retroactivity of the law.

Nor did the Code revoke privileges and induits which had been granted by the Holy See and not recalled expressly prior to May 19, 1918. This is true even though said privileges and induits ran counter to the canons of the Code, e. g., induits regarding the observance of holydays. The reason for this ruling is found in a maxim of law: *Decet beneficia principis esse mansura.* But the privileges or induits in question ceased if they were expressly revoked by some canon.

The Code and former customs (c. 5)—Of the customs in force at the time of the promulgation of the Code (May 19, 1918), some were abrogated, others not.

Customs which the Code expressly reprobates must be considered abrogated. This applies whether the custom was universal or par-

ticular, centenary or not. In fact, such customs arc not permitted to revive in future, for if reprobated, they are considered corruptions of the law.

Customs contrary to the prescriptions of the Code, provided they are not reprobated, may be tolerated if they were centenary or immemorial customs, and provided the Ordinaries believe they cannot be removed without serious inconvenience. Contrary customs which were neither centenary nor immemorial, even though they are not reprobated by the Code, automatically ceased to exist upon the promulgation of the new law. This does not forbid their revival in the future, cfr. p. 101.

The Code makes no mention of the status of customs beyond the law, i. c., which enlarged the obligations of the Code's canons. If such customs were particular, all authors agree that they continued in force; if universal, they arc divided in their opinion. For the rest, it is diflicult to imagine a universal custom beyond the law, save possibly the general custom in the Western Church banning the clerical beard.

The Code and the former legislation (c. 6)—All written laws in force prior to the time of the Code were abrogated if they were not found in the Code. This is true of all contrary legislation whether universal or particular. It is true likewise of all universal pre-Code laws which though not contrary to the prescriptions of the Code, yet merely enlarged the law of the Code. It is not true of particular legislation *praeter jus Codicis.* Hence, the decrees, c. g., of the plenary councils of Baltimore, of provincial councils, of diocesan synods, etc., which did not run counter to the canons of the Code remained in force.

For the most part the Code retains the former discipline. Hence:

1) Those canons which merely restate the former law without change must be construed as the old law was construed;

2) Those canons which partly agree and partly disagree with the former law, insofar as they disagree must be construed in the light of their own wording;

3) In doubt whether the ruling of some canon is at variance or not with the former legislation, it must be presumed to agree with the old law. But if the former law was penal in nature and the Code now makes no mention of the penalty when restating the Jaw, the penalty must be considered abolished.

ART. IV.

LITERATURE ON THE CODE

General Bibliography

1. Sources

Acta Apostolicae Sedis, Commentarium Officiale, 1909-

Acta et Decreta Concilii Plenarii Baltimorensis Tertii, Baltimore: John Murphy Co., 1886.

Acta Sanctae Sedis, 41 vols. Rome, 1865-1909.

Bouscaren, T.L., *The Canon Law Digest,* 2 vol., Milwaukee: Bruce, 1942.

Codicis Juris Canonici Fontes, Cura Card. Gasparri et Serédi, 9 vols., Vatican Press, 1923-1933.

Diocesan Statutes.

Cfr. p. 34-36 of Manual for other source works.

Books of General Reference

Augustine (Bachofen), Charles, "A Commentary on Canon Law," 8 vols., St. Louis: Herder, 1930.

Reste, Ulric, "Introductio in Codicem," Collegeville, Minn., St. John's Abbey Press, 1938.

Blat, Albertus, "Commentarium Textus Codicis Juris Canonici," 5 vols., Rome: Angelico College, 1934.

Bouzelet, Horatius, "The Pastoral Companion," Chicago: Franciscan Herald Press, 1943.

Bouscaren-Ellis, "Canon Law, A Text and Commentary," Milwaukee: Bruce, 1946.

"Catholic Encyclopedia, The" 17 vols., New York, 1909-1912, for historical and doctrinal material.

Cocchi, Guidus, "Commentarium in Codicem Juris Canonici," 8 vols., Turin: Marietti, 1940.

Coronata, Matthaeus Conte a, "Institutiones Juris Canonici," 5 vols., Turin: Marietti, 1936.

Lydon, P. J., "Ready Answers in Canon Law," New York; Benzinger Bros., (revised edition in preparation).

Priimmer, Dominicus, "Manuale Juris Canonici," Friburg: Herder, 1927.

X'crmccrsch-Crcusen. "Epitome Juris Canonici," 4 vols., Rome: Gregorian University, 1937.

Wernz-Vidal, "Jus Decretalium," 7 vols., Rome: Gregorian University, 1938.

Woywod-Smith, "A Practical Commentary on the Code oi Canon Law," 2 vols., New York; Wagner, 1939.

Periodicals

Annuario Pontificio, Vatican Press, for statistics on the Roman Curia, Catholic Hierarchy, Papal Household, Religious Orders and Congregations etc. throughout the universal Church.

Apollinaris, a canon law periodical in Latin, published at Rome: 1928-

Catholic Directory, The Official, New York: Kenedy & Sons.

Clergy Review, The, London: 1931-

Commentariurn pro Religiosis et Missionariis, Rome: 1920-

Ecclesiastical Review, The, Catholic University of America, Washington, D. C.: 1889-

Ephimerides Liturgicae, Rome: 1886-

Huntiletic and Pastoral Review, The, New York; Wagner: 1900-

Irish Ecclesiastical Record, The, Dublin: 1864-

Jurist, The, Catholic University Press, Washington, D. C.: 1941-

Periodica de Re Morali, Canonica, Liturgica, Brugis: 1905-

Priest, The, Huntington, Ind.: 1944-

Special Bibliography

Note: In the special bibliography to follow under the classification: *Articles and Consultations* we have drawn our material exclusively from four sources indicated as follows:

CST. This abbreviation is for *The Casuist,* a 5-vol. work by Wagner of New York containing a selection of practical cases taken from the Homiletic and Pastoral Review appearing mostly before the Code was published, but amended to conform to the Code law by means of special addenda published with the later editions of *The Casuist.*

ER. is our abbreviation for The Ecclesiastical Review.

HPR. stands for The Homiletic and Pastoral Review.

Jurist is the fourth source of our references, and indicates *The Jurist* listed above.

Among the Books of Special Reference arc listed over 200 dissertations, or Canon Law Studies, submitted to the Canon Law Faculty of Catholic University, Washington, D. C., by aspirants to the

doctorate in Canon Law in partial fulfillment of the requirements for the degree. These dissertations are printed works, each averaging some 250 pages, paper bound, the first half of the study being historical, the second half juridical, or a commentary on the present law of the Church as contained in the Code. For the sake of brevity they arc referred to herein as: *C. U. Press,* i.e., the Catholic University of America Press, Washington, D. C. Of the older dissertations many are now out of print. For further information address The Librarian of the University, or communicate with the authors directly whose address can be found in the Catholic Directory.

The Code in General

Books of Special Reference

Cicognani, Amicto G., "Canon Law," Philadelphia: Dolphin Press, 1935.

Attwatcr, Donald, "The Catholic Eastern Churches," Milwaukee; Bruce, 1935.

Duskie, fohn A., "The Canonical Status of the Orientals in the United States," C. U. Press, 1928.

Prunskis, Joseph, "Comparative Law, Ecclesiastical and Civil, in Lithuanian Concordat," C. U. Press, 1945.

Neuberger, Nicholas J., "Canon 6 or the Relation of the *Codex Juris Canonici* to the Preceding Legislation," C. U. Press, 1927.

Barrett, John D. M., "A Comparative Study of the Third Plenary Council of Baltimore and the Code," C. U. Press, 1932.

Articles and Consultations

Providentissima Mater Ecclesia translated, ER. 1917, Oct. 357-360.

The Uniate Oriental Churches, ER. 1918, Feb. 113-130.

Orientals and the sacramental law of the Code, ER. 1919, Sept. 225-238.

Priests of the Oriental rite in the U. S., ER. 1930, May 498-502.

The Syrian Liturgy, ER. 1934, Jan. 57-67.

Spiritual care of the Ruthenians in the U. S., ER. 1937, Nov. 448-461.

Canonical regulations for Greek-Ruthcnians in the U. S., ER. 1929, Aug. 167-177.

Functions of the Code's sources or footnotes, ER. 1924, Jan. 77-83.

General Norms—Book I

Books of Special Reference

Manuals of Moral Theology under *De Legibus.*

Cicognani, Amleto G., "Canon Law," Philadelphia: Dolphin Press, 1935.

Frison, Basil, "The Retroactivity of Law," C. U. Press, 1946.

McCloskey, Joseph A., "The Subject of Ecclesiastical Law According to Canon 12," C. U. Press, 1942.

Hammill, John L., "The Obligations of the Traveler According to Canon 14," C. U. Press, 1942.

Schmidt, John R., "The Principles of Authentic Interpretation in Canon 17 of the Code of Canon Law," C. U. Press, 1941.

Guilfoyle, Merlin J., "Custom," C. U. Press, 1937.

Dube, .Arthur J., "The General Principles for the Reckoning *of* Time in Canon Law," C. U. Press, 1941.

O'Neill, William H., "Papal Rescripts of Favor," C. U. Press, 1930.

Roelker, Edward G., "Principles of Privilege According to the Code of Canon Law," C. U. Press, 1926.

Matulcnas, Raymond A., "Communication, a Source of Privileges," C. U. Press, 1943.

Reilly, Edward M., "The General Norms of Dispensation," C. U. Press, 1939.

Kubelbeck, William J., "The Sacred Pcnitcntiaria and Its Relation to Faculties of Ordinaries and Priests," C. U. Press, 1918.

O'Keefe, Gerald M., "Matrimonial Dispensations, Powers of Bishops. Priests and Confessors," C. U. Press, 1927.

Motry, Hubert L., "Diocesan Faculties According to the Code of Canon Law," C. U. Press 1918.

Articles and Consultations

When must decrees and regulations of the Holy See be put into effect? HPR. 1930, Dec. 295.

The traveler and local statutes, Jurist, 1942, Apr. 105-119.

Who can propose doubts to the Code Committee? ER. 1918, May 543.

Can civil law always supplement silence of canon law? ER. 1920, Nov. 460-465.

Serves a Protestant meat on Friday, CST. V. 330.

When does a particular precept cease? HPR. 1928, Apr. 755.

Does personal censure hind outside of diocese? CST. III, 104; I, 44.

Purposely visits neighboring diocese to escape local fast, CST. IV. 53.

The force of custom in the Church, HPR. 1938, Feb. 520-522.

Fast and daylight saving time, ER. 1918, May 565-567; IIPR. 1937, July 962. '

Computing midnight, ER. 1932, Aug. 176-180; 1939, Nov. 399-413; 1940, Sept. 279-283; HPR. 1923, Sept. 1301.

Eating meat after midnight and saying Mass, ER. 1942, March 217-220.

Sun Time simplified, E.R. 1939, July 1-8.

"The Encyclopedia Americana," under *Time*.

Mohammedan marriage dispensation through inadvertance, ER. 1938, Apr. 478.

fhe difference between privilege and dispensation, HPR. 1938, Nov. 168.

Can vicar-general permit in this case what bishop forbade? CST. III, 104.

When a privilege cannot be renounced, ER. 1918, Sept. 308.

How confession faculties for the neighboring diocese were interpreted, CST. HI, 238.

Can confessor grant a fast dispensation to a wife through her husband who confesses? CST. III, 286.

Is a year-old unused dispensation granted by the Holy See still good? CST. IV. 59.

Persons in General

Books of Special Reference

Costello, John M., "Domicile and Quasi-Domicile," C. U. Press, 1930.

Brown, Mr. Brendan Francis, "The Canonical Juristic Personality With Special Reference to Its Status in the United States of America," C. U. Press, 1927.

Olalia, Alexander A., "A Comparative Study of the Christian Constitution of States and the Constitution of the Philippine Commonwealth," C. U. Press, 1944.

Connors, Charles P., "Extra-Judicial Procurators in the Code of Canon Law," C. U. Press, 1944.

Articles and Consultations

When the advice or consent of a body is needed must they be called together? HPR. 1931, Sept. 1310-1311.

Acquiring domicile and quasi-domicile for marriage, cfr. reference material in chapter on marriage herein.

Clerics in General

Manuals of Moral Theology under *De Praeceptis* or *De Obligationibus* or *De Statibus Particularibus.*

McBride, James T., "Incardination and Excardination of Seculars," C. U. Press, 1941.

McGrath, James, "The Privilege of the Canon," C. U. Press, 1946.

Downs, John E., "The Concept *of* Clerical Immunity," C. U. Press, 1941.

Brunini, Joseph B., "The Clerical Obligations of Canons 139 and 142," C. U. Press, 1937.

Manning, Joseph L., "The Free Conferral of Offices," C. U. Press, 1946.

Gallihcr, Daniel M., "Canonical Elections," C. U. Press, 1917.

Parsons, Anscar J., "Canonical Elections," C. U. Press, 1939.

McDevitt, Gerald V., "The Renunciation of an Ecclesiastical Office," C. U. Press, 1945.

Kearney, Raymond A., "The Principles of Delegation," C. U. Press, 1929.

Keene, Michael J., "Religious Ordinaries and Canon 198," C. U. Press, 1942.

Miaskicwicz, Francis S., "Supplied Jurisdiction According to Canon 209," C. U. Press, 1940.

Findlay, Stephen W., "Canonical Norms Governing the Deposition and Degradation of Clerics," C. U. Press, 1941.

Sweeney, Francis P., "The Reduction of Clerics to the Lay State," C. U. Press, 1945.

Articles and Consultations

"The Encyclopedia Americana" under *Church Government.*

Incardination and excardination, ER. 1927, Mar. 317-319.

A case of excardination and incardination, ER. 1918, [une 687-690.

Incardination questions, HPR. 1923, June 969.

Transferring a priest to another diocese, HPR. 1927, Mar. 637.

Incardination implied in benefice, HPR. 1929, Mar. 644.

The privilegium fori, ER. 1925, Aug. 159-171.

Ex-war priests, ER. 1919, Mar. 295; Apr. 378-388.

Dail}· meditation and the Code, ER. 1919, Oct. 427-429.

Dances and the Council of Baltimore, ER. 1918, May 537; 1919, Aug. 200, Oct. 445; 1923, Feb. 195; 1934, May 537-538; HPR. 1923, Jan. 414-416; 1932, July 1078; 1938, Noy. 173.

Can secular priests spontaneously retire? ER. 1921, Oct. 419.

Extent of canonical obedience, CST. II, 188.

Clerical obedience to decree concerning horse races, HPR., 1925, July, 988.

Clergy and prize fights, HPR. 1929, Jan. 412.

Clerics and the theater, HPR. 1936, Aug. 1188; 1937, Nov. 181.

What occupations are forbidden to priests? ER. 1918, May 560-561.

Stocks and bonds and the clergy, ER. 1932, Oct. 409-411; HPR. 1930, Mar. 626; 1940, Oct. 81; CST. IV. 229.

A case of trading and clerics, HPR. 1926, Dec. 295.

Clerical dress, HPR. 1935, Oct. 72-74.

Style of the diocesan cassock, ER. 1933, July 82.

Obligation to wear the clerical garb, ER. 1935, Nov. 525.

Discarding the clerical garb on vacations, HPR. 1923, July 1093.

Lav secretaries in parish offices, HPR. 1923, July 1090; Nov. 181.

Near East privilege as to divine office, how interpreted, HPR. 1933, Nov. 183; ER. 1941, July 36-41.

When the ordo errs, HPR. 1922, Feb. 536.

Priests as members of the Rotary Club, HPR. 1927, .Apr. 755; 1930, Apr. 750-751 ; ER. 1935, May 541-542.

Priests of the Oriental rite in the U. S., ER. 1930, May 498-502.

Are religious bound to attend diocesan conferences? ER. 1937, Aug. 191-193.

Is diocesan support obligatory for deposed priests? CST. IV. 1.

An invalid ordination case, CST. V, 238.

Voting for oneself does not always invalidate an election, HPR. 1927, Sept. 1320; Dec. 297.

When a vote given to oneself decided an election, HPR. 1929, Oct. 72-75.

Resigning a parish, ER. 1926, Mar. 311-312.

Recalling a resignation of a parish, ER. 1926, Aug. 188.

Was it simony? ER. 1921, Aug. 181-183.

Can one dispense himself? HPR. 1928, July 1103.

Common error and lack of confession faculties, ER. 1918, Nov. 541; 1923, May 515-516.

Common error and assisting at marriage, cfr. Manual Chapter on Marriage, Art. on Solemnization.

Papal Office and Government

Books of Special Reference

Hynes, Harry G., "The Privileges of Cardinals," C. U. Press, 1945.

Dziob, Michael J., "The Sacred Congregation for the Oriental Church," C. U. Press, 1946.

Kubelbeck, William J., "The Sacred Penitcntiaria and Its Relations to Faculties of Ordinaries and Priests," C. U. Press, 1918.

Winslow, Francis J., "Vicars and Prefects Apostolic," C. U. Press, 1924.

McDonough, Thomas J., "Apostolic Administrators," C. U. Press, 1941.

Benko, Matthew A.. "The Abott *Nullius,"* C. U. Press, 1943.

Nainfa, John A., "The Costume *of* Prelates," Baltimore: John Murphy Co., 1933.

"Annuario Pontificio" for statistics on the Roman Curia, Papal Household, etc.

Articles and Consultations

The Monarchical constitution of the Church, ER. 1925, Dec. 575-584.

The confessor takes a case to the S. Penitentiary, CST. Ill, 175.

The Apostolic Delegation at Washington, ER. 1936, Dec. 576-592.

Status of Protonotarics Apostolic, ER. 1924, Apr. 411-413.

Bishops

Books of Special Reference

Ryan, Gerald A., "Principles of Episcopal Jurisdiction," C. U. Press, 1939.

Dicderichs, Michael F.» "The Jurisdiction of the Latin Ordinaries Over Their Oriental Subjects," C. U. Press, 1946.

Eidenschink, John A., "The Election of Bishops in the Letters of Pope Gregory the Great," C. U. Press, 1946.

Donnellan, Thomas A., "The Obligation of the Missa pro Populo," C. U. Press, 1942.

Slafkosky, Andrew L., "The Canonical Episcopal Visitation of the Diocese," C. U. Press, 1941.

Lynch, George E., "Coadjutors and Auxiliaries of Bishops," C. U. Press, 1946.

Donnelly, Francis B., "The Diocesan Synod." C. U. Press, 1932.

"The Official Catholic Directory," P. J. Kenedy & Sons, N. Y., for statistics on bishops in all English-speaking countries.

"Annuario Pontificio," for statistics on bishops throughout the world.

Articles and Consultations

How candidates to bishoprics arc selected in the U. S., ER. 1925, Dec. 621-622.

Formulary to be used in the bishop's report to the Holy See, ER. 1919, Apr. 396-417.

Administrative and judicial acts of the bishop, HPR 1927, June 989.

A bishop appoints pastors after being notified of his own transfer, HPR. 1927, July 1223.

The Episcopal Curia

Books of Special Reference

Campagna, Angelo, "II Vicario Generale del Vcscovo," C. U. Press. 1931.

Prince, John E., "The Diocesan Chancellor," C. U. Press, 1942.

Louis, William F., "Diocesan Archives," C. U. Press, 1941.

Motry, Hubert L., "Diocesan Faculties According to the Code of Canon Law," C. U. Press, 1922.

Connolly, John P., "Synodal Examiners and Parish Priest Consuitors," C. U. Press, 1943.

Klekotka, Peter J., "Diocesan Consultors," C. U. Press, 1920.

Jaeger, Leo A., "The Administration of Vacant and Quasi-Vacant Episcopal Sees in the United States," C. U. Press, 1932.

Zaplotnik, Johannes L., "De Vicariis Foraneis," C. U. Press, 1927.

Reading material on the diocesan court will be found in Book IV of this Manual.

"The Official Catholic Directory," Kenedy & Sons, N. Y-> lists the personnel of the episcopal curia of each diocese.

Articles and Consultations

When the vicar-general acts with special mandate, is it ordinary or delegated jurisdiction? Jurist, 1942, Oct. 346-362.

Religious as parish priest consultors, ER. 1933, Nov. 525-527.

Authority of vicars forane, ER. 1923, Aug. 199.

Can the chancellor be made a general delegate of the bishop? Jurist, 1943, Oct. 567-586.

Pastors and Parishes

Books of Special Reference

Manuals of Moral Theologj· under *De Sacrificio Missae* for the *Missa pro populo obligation.*

Manuals of Pastoral Theologj·.

Golden, Hcnrv F., "Parochial Benefices in the New Code," C. U. Press, 1925.

Connolly, Nicholas P., "The Canonical Erection of Parishes," C. U. Press, 1938.

Mundy, Thomas M., "The Union of Parishes," C. U. Press, 1944.

Coadv, John J., "The Appointment of Pastors," C. U. Press, 1929.

Connor, Maurice, "The Administrative Removal of Pastors," C. U. Press, 1937.

Galvin, William A., "The Administrative 'Transfer of Pastors," C. U. Press, 1946.

Koudelka, Charles J., "Pastors, Their Rights and Duties According to the New Code of Canon Law," C. U. Press, 1921.

Donnellan, Thomas A., "The Obligation of the Missa pro Populo," C. U. Press, 1942.

Reilly, Peter, "Residence of Pastors," C. U. Press, 1935.

Ferry, William A., "Stole Fees," C. U. Press, 1930.

Kremer, Michael N., "Church Support in the United States," C. U. Press, 1930.

O'Rourke, James J., "Parish Registers," C. U. Press. 1934.

Clarke, Thomas J., "Parish Societies," C. U. Press, 1943.

Articles and Consultations

Arc parishes in the U. S. canonical ones? ER. 1918, Nov. 537.
Parishes without boundary lines, ER. 1930, Oct. 391-398.
Parish boundaries, how determined, ER. 1937, Feb. 190.
Dependent chapels and main church, HPR. 1922, Feb. 539.
Status of chapels of case, HPR. 1925, Apr. 728.
Must a parish have a church? HPR. 1929, Mar. 645.
What are language parishes? HPR. 1933, July 1084.
National parish membership, ER. 1932, Nov. 531-537; 1933, Mar. 314-316.
Who belongs to national, and who to territorial parishes? ER. 1927, Jan. 90-91.
The juridical status of religious parishes under the Code, Jurist, 1941, Oct. 329-335; 1943, Jan. 117-128.
Are colored parishes national parishes? ER. 1919, Jan. 85; 1943, May 382-384.
Status of foreign language pastors, HPR. 1923, Apr. 747.
Latin pastors and Oriental parishioners, ER. 1932, July 76-77.
Interdiocesan jurisdiction, ER. 1933, Mar. 311-314.
The cathedral pastor's status, ER. 1924, Mar. 312-313; May 520; June 633-636.
Do they belong to the closer parish? HPR. 1925, May 875.
Paving pew rent in one church and having membership in another^ HPR. 1922, Mar. 654; ER. 1926, Apr. 413; 1930, Apr. 423-425.
A question of domicile, ER. 1926, May 533.
Relation of pastor to religious institutions within the parish, HPR. 1933, May 853-855; cfr. also reading material under *Chaplains.*
Status of pastors appointed after bishop receives notice of his transfer, HPR. 1927, July 1223.
Appoints less worthy priest to parish to keep him in diocese—simony? CST. IV, 153.
Appointing irremovable pastors in the U. S., ER. 1931, Oct. 388-391
Installation of pastors, ER. 1934, Dec. 620-624.
Temporalities of parish priests, ER. 1920, May 545-550.
The law on fees and stipends, Jurist, 1941, Oct. 335-342.
The pastor's revenues as in canon 463, Jurist, 1943, Apr. 284-305.
Do pastoral fees go to church? HPR. 1922. June 1018.
Jura stolae question, ER. 1924, May 526-527.

Docs excess of customary fee belong to the pastor? HPR. 1922, July 1128.

To whom do the fees belong as between two pastors? HPR. 1922, Sept. 1343.

Pastor's jurisdiction over parish societies, ER. 1932, Sept. 307-311.

The pastor owner or administrator of church society funds? HPR. 1931, May 864-865.

Pastoral vacations, ER. 1941, Mar. 278.

Vacation with pay? HPR. 1932, Oct. 67.

Must pastor visit seriously ill apostate parishioner although not requested to do so? CST. III, 309.

Pastors and weekday Masses, CST. V, 139.

Ecclesiastical legislation on the Missa pro populo, ER. 1919, Oct. 363-371.

When did Missa pro populo obligation begin in the U.S.? HPR. 1923, Apr. 746.

Ethics *of* the Missa pro populo, ER. 1919, Oct. 424-427.

Meaning of *ex justitia* in Missa pro populo, ER. 1919, Nov. 589-590.

A Missa pro populo case, ER. 1936, May 532.

Missa pro populo and suppressed feasts, HPR. 1930, Dec. 296-297.

Missa pro populo and transferred feasts, ER. 1929, Apr. 409-411.

Missa pro populo on patronal feasts, ER. 1934, Apr. 428-430.

Missa pro populo in poor parishes, HPR. 1931, Apr. 747-748.

Does reduction of Masses pro populo obligation continue after bishop's death if granted by latter's authority? ER. 1932, Sept. 301-304.

Personal and local obligation of the Missa pro populo, ER. 1933, Oct. 430.

What cause justifies transference of Missa pro populo to another priest? ER. 1921, Sept. 300.

Habitually delegating the Missa pro populo, ER. 1924, June 638.

Transferring the Missa pro populo to enjoy high Mass stipend, ER. 1941, Oct. 304-306.

Anticipating the Missa pro populo, ER. 1918, Sept. 303.

Missa pro populo and Gregorian Masses, ER. 1941, Oct. 325.

Missa pro populo if impeded, ER. 1918, .May 561-562.

Five questions concerning the Missa pro populo, ER. 1920, Sept. 292-294.

Must Missa pro populo omitted in good faith still be said? HPR. 1940, Aug. 1239; 1942, Aug. 1060.

Missa pro populo and binated Mass, HPR. 1928, Dec. 300.

Immaterial which of two Sunday Masses is applied pro populo, HPR. 1938, Mar. 633.

Binated stipend to the bishop, ER. 1941, Oct. 306-309.

Some bination questions, HPR. Oct. 1923, 60-63.

Parish registers, ER. 1921. July 1-12.

Secret parish records, HPR. 1925, Jan. 408.

Is record of sick calls required? HPR. 1941, June 941.

Can register entries be delegated to others? HPR. 1923, Oct. 75.

Lav secretaries in parish offices, HPR. 1923, July 1090; Nov. 181.

Parochial Vicars and Chaplains

Books of Special Reference

Bastnagel, Clement V., "The Appointment of Parochial Adjutants and Assistants," C. U. Press, 1930.

Drumm, William M., "Hospital Chaplains," C. U. Press, 1943.

Articles and Consultations

Chaplains and parish rights, ER. 1919, Apr. 455.

Six questions concerning spiritualities in hospitals, ER. 1922. Feb. 185-192.

Jurisdiction of institution chaplains, ER. 1927, Jan. 93-95; 1934. Sept. 308; 1935, Mar. 295-297.

Status of chaplains, ER. 1927, Feb. 212-213; HPR. 1924, Feb. 513; Mar. 620.

Hospital chaplain's rights, ER. 1935, Feb. 197; HPR. 1920. Dec. 221-222.

Has chaplain right to funeral service of Sister inmate? ER. 1941, Nov. 420.

Chaplains and Holv Week functions, HPR. 1923, May 857-859.

Chaplain, not Sister, examines celebret, HPR. 1933, Oct. 73.

Is chaplain's permission to hear patient's confession necessary? ER. 1931, Nov. 526.

Can college and university chaplains be given parochial rights? HPR. 1934, Mar. 632.

For further material on the status of parish vicars and chaplains, consult the headings below under the individual sacraments.

Religious

Books of Special Reference

Manuals of Moral Theology under *De Praeceptis* or *De Obligationibus* or *De Statibus Particularibus.*

Creusen, Joseph, "Religious Men and Women in Church Law," Milwaukee: Bruce, 1941.

Papi, Hector, "Religious in Church Law," New York; Kenedy & Sons, 1924.

Schaefer, Timotheus, "De Religiosis," Rome: S.A.L.E.R., 1940.

Gcser, Fintan, "The Canon Law Governing Communities of Sisters," St. Louis: Herder, 1938.

Orth, Clement R., "The Approbation of Religious Institutes," C. U. Press, 1931.

Flanagan, Bernard J., "The Canonical Erection of Religious Houses." C. U. Press, 1943.

Lynch, Timothy, "Contracts Between Bishops and Religious Congregations," C. U. Press, 1946.

Frcriks, Celestine A., "Religious Congregations in Their External Relations," C. U. Press, 1916.

Farrell, Benjamin F., "The Rights and Duties of the Local Ordinary Regarding Congregations of Women Religious of Pontifical Approval," C. (J. Press, 1941.

Papi, Hector, "The Government of Religious Communities," New York: Kenedy & Sons, 1919.

Lewis, Gordian, "Chapters in Religious Institutes," C. U. Press, 1943.

Keene, Michael J., "Religious Ordinaries and Canon 198," C. U. Press, 1942.

Clancy, Patrick M., "The Local Religious Superior," C. U. Press, 1943.

Bowe, Thomas J., "Superioresses in Communities of Women Religious," C. U. Press, 1946.

Reilly, Thomas F., "Visitation *of* Religious," C. U. Press, 1938.

McCormick, Robert E., "Confessors of Religious," C. Ü. Press, 1926.

McManus, James E., "The Administration of Temporal Goods in Religious Institutes," C. U. Press, 1937.

Kealy, Thomas M., "Dowry of Religious Women," C. U. Press, 1941.

Bakalarczyk, Richard, "De Novitiatu," C. U. Press, 1927.

Balzer, Ralph F., "The Computation of Time in a Canonical Novitiate," C. U. Press, 1946.

Brockhaus, Thomas A., "Religious who arc known as *Conversi,"* C. U. Press, 1946.

Cotel, Peter, "A Catechism of the Vows," New York: Benzin* ger, 1924.

Papi, Hector, "Religious Profession," New York: Kenedy & Sons, 1919.

Frey, Wolfgang N., "The Act of Religious Profession," C. U. Press, 1931.

Bolduc, Gaticn, "Les Études dans les Religions Cléricales," C. U. Press, 1942.

Gill, Nicholas, "The Spiritual Prefect in Clerical Religious Houses of Study," C. U. Press, 1946.

Turner, Sidney J., "The Vow of Poverty," C. U. Press, 1929.

Schaaf, Valentine T., "The Cloister," C. U. Press, 1921.

Barrj', Garrett F., "Violation of the Cloister," C. U. Press, 1942.

Shuler, Ralph V., "Privileges of Religious to Absolve and Dispense," C. U. Press, 1943.

Melo, Antonius, "De Exemptione Regularium," C. U. Press, 1921.

O'Brien, Joseph D., "The Exemption of Religious in Church Law," Milwaukee: Bruce, 1942.

Meyer, Louis G., "Alms-Gathering by Religious," C. U. Press, 1945.

Kowalski, Romuald E., "Sustenance of Religious Houses of Régulais.'· C. U. Press. 1944.

Piontek, Cyrillus, "De Induito Exclaustrationis nccnon Saccularizationis," C. U. Press, 1925.

Riesner, Albert J., "Apostates and Fugitives From Religious Institutes," C. U. Press, 1942.

O'Neill, Francis J., "The Dismissal of Religious in Temporary Vows," C. U. Press, 1942.

O'Leary, Charles G., "Religious Dismissed After Perpetual Profession," C. U. Press, 1943.

Michalicka, Wenceslas C., "Judicial Procedure in Dismissal of Clerical Exempt Religious," C. U. Press, 1923.

"Annuario Pontificio" for statistics on religious throughout the universal church.

"The Official Catholic Directory," New York, Kenedy & Sons, published annually, for statistics on religious in the U. S.

Articles and Consultations

Are religious vows opposed to true Americanism? HPR. 1938, Feb. 524-526.

The Four Great Rules of Religious Orders, HPR. 1939, Oct. 68-70.

Revision of rules and constitutions of religious communities, ER. 1919, Jan. 27-36.

How new religious Congregations begin, ER. 1926, Dec. 661.

Suggested questionnaire for use of bishops in visitation of non-exempt religious communities, Jurist, 1942, (supplement to July 1-16)).

"Canon 516," ER. 1937, Nov. 482.

Pastor's jurisdiction over the lay help in religious houses of women, ER. 1926, Jan. 85.

The pastor and convent schools, ER. 1928, Jan. 76-78; May 525.

Can religious superiors be deposed or transferred before the expiration of their three years' term? ER. 1919, Feb. 183.

Perennial offices of minor religious superiors, ER. 1929, Sept. 313-315; HPR., 1921, Mar. 552; May 749-751; June 947.

Re-election at end of unexpired term of predecessor in office; HPR. 1920, Oct. 38.

Administrative removal of religious from office, Jurist, 1942, Jan. 32-46.

Ordinary and extraordinary confessors, ER. 1918, May 556-557.

Confessing religious women, ER. 1926, Jan. 34-44.

Some doubts concerning extraordinary confessors of Sisters, ER. 1936, Sept. 291-293.

Absence of confessional and validity of Sisters' confessions, ER. 1940, June 532.

Meaning of c. 524, §1. ER. 1938, Dec. 554-556.

Enforcing weekly confessions in religions, ER. 1941, Nov. 422.

Appointing parish priests as confessors to Sisters of the parish school, HPR. 1921, Sept. 1148.

Does the confessor in this case interfere with the external government of the community? ER. 1944, Nov. 393.

Hearing a Sister's confession in the sacristy, HPR. 1932, Apr. 747; 1933, Feb. 523.

The confessional for Sisters, HPR. 1933, May 857.

A religious house borrows money, ER. 1940, Feb. 170.

Useful questionnaires prior to admission of postulants and novices, HPR. 1932, June 960-964.

Shortening the postulancy, ER. 1929, July 92; 1941, Nov. 418-420.

Secular deacon desires to become a religious, HPR. 1926, Nov. 192.

Seminarian joining a religion, and compensation to the bishop, HPR. 1929, June 996.

Can religious vows be anticipated? HPR. 1925, Sept. 1306.

Advisory and decisive vote of chapter when admitting to religious profession, HPR. 1930, June 984-986.

The vow of poverty, ER. 1923, June 554-561 ; 1928, Mar. 308; HPR. 1931, Nov. 186; 1927, Dec. 302; 1940, Sept. 1357.

Privileges of religious Orders as to ordination, ER. 1925, Nov. 544.

Collections by religious and the authority of the bishop, HPR. 1927, Mar. 637.

Religious as parish priest consultors, ER. 1933, Nov. 525-527.

A lay brother is dispensed from solemn vows, CST. V, 98.

Offices secularized religious priests may hold in the diocese, HPR. 1931, Jan. 405.

Ex-religious disqualified for certain offices, HPR. 1935, July 1062.

Can ex-religious be pastors? ER. 1933, Nov. 525-527.

Ex-religious confessing religious women, ER. 1934, Oct. 420.

The Laity

Books of Special Reference

Manuals of Pastoral Theology under *Parish Societies, Confraternities, etc.*

Reinman, Gerald J., "The Third Order Secular of St. Francis," C. U. Press, 1928.

Borkowski, Aurelius L., "De Confraternitatibus Ecclesiasticis," C. U. Press, 1918.

Clarke, Thomas J., "Parish Societies," C. U. Press, 1943.

Articles and Consultations

Not every Catholic society is an ecclesiastical one, HPR. 1940, Feb. 517.

Can absent and deceased persons be taken into membership of pious sodalities? HPR. 1932, Jan. 411-413.

How to enroll in confraternities and pious unions, HPR. 1934, Aug. 1197.

The confraternity of the Blessed Sacrament, ER. 1933, Feb. 266-274.

The confraternity of Christian Doctrine, ER. 1935, May 543; 1938, Apr. 476-478.

Lapse of membership in pious unions, ER. 1939, Aug. 169.

Suppressing a parish society, ER. 1937, Mar. 301-306.

Is the pastor owner or administrator of parish society funds? HPR. 1931, May 864-866.

The Sacraments in General

Books of Special Reference

Manuals of Moral and Pastoral Theology.

King, James I., "The Administration of the Sacraments to Dying Non-Cathoiics," C. U. Press, 1924.

Sullivan, Eugene H., "Proof of the Reception of the Sacraments," C. U. Presi, 1944.

Ryder, Raymond A., "Simony," C. U. Press, 1931.

Articles and Consultations

Was it simony? ER. 1921, Aug. 181-183.

Baptizing dying Protestants, ER. 1924, Sept. 317.

Baptizing unconscious dying persons, ER. 1933, Dec. 638.

An unconscious Protestant is baptized conditionally, CST. IV, 164.

Baptizing a conscious dying material heretic, CST. II, 169.

Baptizing a dying petitioner who refuses to embrace the Catholic faith, ER. 1921, Sept. 304; 1929, Sept. 309-310.

Sacraments to dving non-Catholics, ER. 1921, Mar. 255-260; 1931, Mar. 296; HPR. 1922, June 1014.

Sacraments to a dying convert, ER. 1920, Apr. 476.

Helping dying Protestants, ER. 1922, Nov. 444-446.

Can a priest absolve his dving non-Catholic father? CST. III, 40.

Orientals and the Code legislation on the sacraments, ER. 1919, Sept. 225-238.

Baptism

Books of Special Reference

Waldron, Joseph F., "The Minister of Baptism." C. U. Press, 1942.

Goodwine, Joseph G., "The Reception of Converts," C. U. Press. 1944.

Kearney, Richard J., "Sponsors at Baptism According to the Code of Canon Law," C. U. Press, 1925.

Sullivan, Eugene IL, "Proof of the Reception of the Sacraments," C. U. Press, 1944.

Manuals of Moral Theology under *Baptism*.

Articles and Consultations

Who has the right to baptize a convert as between pastor and instructor? HPR. 1928, May 878; ER. 1936, May 531-532.

Baptizing infant *peregrini,* CST. I, 151.

Baptizing unconscious dying persons (cfr. material in preceding section).

Instructions before baptizing a child, ER. 1930, Dec. 631; HPR. 1935, May 847, Dec. 292.

Baptizing the feeble minded, HPR. 1931, Nov. 184.

May a child of invalidly married parents be baptized? ER. 1932, Nov. 524-526; HPR. 1922, Jan. 415; 1940, May 896; 1924, July 1063.

Baptizing children of careless Catholic married to non-Catholic, HPR. 1924, May 849.

Can convert be baptized who must practise faith in secret? HPR. 1934, Dec. 289-290.

How to receive converts into the Church, ER. 1932, Nov. 526-530; HPR. 1920, Oct. 39; 1933, Jan. 412-416; 1934, Apr. 743.

Must schismatic converts be rebaptized? CST. IV. 303.

Baptism of adults, ER. 1931, Nov. 527; HPR. 1932, Sept. 1301.

Baptism of foundlings, ER. 1923, Aug. 197.

What is solemn and private baptism? ER. 1918, May 558-559.

Latin and English at baptisms, ER. 1928, Aug. 197.

Short formula for adult baptisms, ER. 1937, Aug. 175-176; 1932, Jan. 67-68.

Adult form of baptism, HPR. 1921, Nov. 183.

Omitting saliva ceremony, ER. 1947, Feb. 150.

Disinfecting baptismal water, ER. 1926, Sept. 308.

What kind of water is used in private baptism? ER. 1926, Sept. 308.

Can minister of baptism be a sponsor? HPR. 1934, Dec. 291.

Baptismal sponsors must he practical Catholics, ER. 1931, Oct. 412; HPR. 1936, Sept. 1275-1282.

Is a sponsor required in adult baptism? ER. 1937, Jan. 87.

Questionable baptismal sponsorships, CST. I, 243.

Protestant baptismal sponsor, CST. IV, 257 ; V, 102.

Proxies for baptismal sponsors, ER. 1929, Apr. 419.

Obligations of baptismal sponsors, ER. 1928, Dec. 581-596; 1929, Jan. 124-134; Mar. 276-287.

Solemn baptism in hospitals, ER. 1927, Sept. 301-303; 1929, May 512; 1920, Jan. 74-75; Mar. 315-318; 1932, Oct. 411 ; HPR. 1924, May 845; 1928, Nov. 181; 1929, Feb. 534; 1936, Mar. 635.

Solemn baptism in private homes, ER. 1928, Sept. 305-307; 1935, Sept. 300; HPR. 1934, Dec. 291.

Must pastor record baptism of his subject baptized outside his parish? HPR. 1940, Oct. 86.

Recording illegitimates, ER. 1943, Dec. 456-458.

Record of baptisms performed in hospitals, HPR. 1927, May 870.

Recording baptisms of non-Catholic infants, ER. 1945, Aug. 148.

How to prove baptism other than by certificate, ER. 1935, Sept. 306.

Confirmation

Books of Special Reference

Coleman, John J., "The Minister of Confirmation," C. U. Press, 1941.

Articles and Consultations

Confirmation not to be conferred in Latin Church generally before the 7th year of age, saving a few exceptions. *Jeta,* 1932, 271 ; ER. 1932, Nov. 513-515; 1938, Feb. 160-164; HPR. 1923, Aug. 1190; Jurist, 1927, Jan. 70.

Must middle aged man seek confirmation? CST. V, 110.

Sponsors at confirmations, ER. 1918, Apr. 435.

Priest, Sisters, parents, as confirmation sponsors, CST. V, 113.

One sponsor for all confirmands allowed? ER. 1918, Apr. 435.

Text of Decree on confirmation faculties of pastors, together with translation and commentary, ER. 1947, Apr. 241-265.

Holy Mass

Books of Special Reference

Manuals of Moral Theology.

McGarvey, Thomas J., "Bination," C. U. Press, 1946.

Henry, Joseph A., "The Mass and Holy Comtnunion: Inter-Ritual Law," C. U. Press, 1946.

Keller, Charles F., "Mass Stipends," St. Louis: Herder, 1936.

Miller, Newton T., "Founded Masses According to the Code of Canon Law," C. U. Press, 1926.

Articles and Consultations

The chaplain, not the religious superior, examines the celebret, HPR. 1933, Oct. 73.

Three Masses allowed to same celebrant in some countries on Sunday, HPR. 1940, Oct. 82.

Bination and visiting priest, HPR. 1929, Dec. 295; 1941, Mar. 639; ER. 1919, Sept. 303; 1940, Apr. 348-349.

Bination a privilege or duty? Jurist, 1942, Apr. 145-154.

Binating in hospital chapel, ER. 1942, July 71.

How much attendance justifies bination? ER. 1945, June 467.

Doubts sinful state, and if he broke fast before saving Mass, CST. III, 240; IV. 7.

Confession of celebrant before Mass, CST. II, 135.

Can contrition replace confession in this case ante sacrum? CST. IV, 244; 281.

Deficienti copia confessant, HPR. 1928, Feb. 535.

Celebrating and binating after breaking fast, CST. I, 268; ER. 1934, Feb. 180-182.

Fasting priest may not consume particles extra Missam, ER. 1932, Oct. 419.

Stomach pump before and after communion. CST, III, 138; V, 131.

Cfr. additional material on the fast in following section under Communion.

Mass for a deceased Protestant, ER. 1919, Apr. 456.

Mass cards for deceased non-Catholics, ER. 1937, Jan. 88.

Applying Mass for deceased unbaptized child—for deceased Protestant—for sick Jewess—for Catholic suicide—for deceased excommunicated priest, CST. V, 145.

A suicide's will provides for Masses in his behalf, CST. III, 182.

Saying Mass for a suicide, ER. 1934, June, 629; CST. V, 145.

Stipends from persons in debt, ER. 1925, July 80.

.Mass without a server, ER. 1919, May 550; July 100; Sept. 318-323; 1923, .Mar. 294-296; 1928, Apr. 403-413; 1934, Sept. 298-301; HPR. 1921, Dec. 292; 1922, Nov. 158-161; 1932, June 969.

Mass under one species, CST. Ill, 76: HPR. 1923, Nov. 183.

How much wine is required for Mass, and docs non-alcoholic wine suffice? CST. V, 115.

Alcoholic content of Mass wine, ER. 1918. Mar. 324.

Before pouring wine into chalice priest observes it has been diluted with water, CST. Ill, 244.

No water at hand, but says Mass, CST. IV. 226.

Finishes Mass for fainting celebrant, CST. V, 142.

Saying Mass with bandaged finger, CST. Ill, 143.

At solitary .Mass should last blessing be given? HPR. 1935, Nov. 183.

The oratio imperata, ER. 1937, Mar. 306; HPR. 1936, Sept. 1306; 1940, Apr. 781; Dec. 322.

Congregation praying aloud at Mass. HPR. 1939, May 862.

Prayers after low Mass, HPR. 1921, July 946; 1933, Apr. 736; 1940, Feb. 520.

Meaning of conventual Mass, ER. 1933, Jan. 75.

Meaning of .Missa privata, ER. 1926, May .531; 1933. Dec. 642; 1934, Mar. 304-307; 1939, Oct. 365; 1940, Sept. 287; HPR. 1924, Apr. 743; 1935, Aug. 1187.

When the ordo errs, HPR. 1922, Feb. 536; July 1125.

Mutilated Missa cantata, ER. 1927, Feb. 205.

Omitting the passion on Palm Sunday, ER. 1929, Mar. 315.

Christmas midnight Mass, ER. 1919, Dec. 710-712; 1932, Dec. 628-633; HPR. 1924, Nov. 175.

Christmas midnight low Mass, HPR. 1941, Feb. 534.

Christmas midnight Mass in chapels of case, ER. 1920, Feb. 220; HPR. 1938, Jan. 416-418; Apr. 738.

Private Mass in chapels of case on Holy Thursday, ER. 1920, Mar. 312; 1921, Mar. 279.

Low Mass on Holy Saturday and none on Thursday, ER. 1932, Mar. 320.

Mass at sea, ER. 1931, Aug. 196.

Sunday precept and Mass at sea, ER. 1939, July 72.

How to apply for permission to say Mass at sea, ER. 1924, Jan. 99; 1927, Feb. 199.

Who can satisfy Mass obligation at portable altar? ER. 1939, Jan. 69.

Can Mass be said in sacristy and conununion distributed? ER. 1930, Mar. 309.

Mass in sacristy or school, ER. 1931, Feb. 198; 1932, Mar. 313.

Mass stipends—the law, ER. 1932, July 32-41.

Purgatorial societies and Mass fees, ER. 1921, Jan. 79; Sept. 307; 1945, Mar. 229; IIPR. 1923, May 859.

Stipends for binated Masses, ER. 1919, May 571-572.

Must stipend for binated Mass be restored? HPR. 1929, July 1103.

Bunching intentions on All Souls' Day, ER. 1919, Feb. 189; 1923, Oct. 423; 1933, Nov. 538.

Bunching low Masses into high Masses, ER. 1932, Sept. 311-313; 1946, Aug. 141-145; 1943, Oct. 297-298.

Interpreting bequests for Masses, ER. 1919, Tune 703-704; 1920, Apr. 471-472; Sept. 294-296; 1924, Oct. 420; 1931, May 521; 1938, Feb. 178; HPR. 1930, Sept. 1325; 1933, Aug. 1194; 1937, Mar. 626-628.

Undetermined number of Mass stipends, ER. 1927, May 542; Jurist, 1942, Oct. 375-379.

Gregorian Masses, CST. V, 151; HPR. 1939, July 1109-1112; 1940, Feb. 518; ER. 1946, June 462.

Two dollars for dated low Masses, ER. 1929, Jan. 87-88.

Increased stipend for late funeral and wedding Masses. ER. 1936, May 529-531.

Keeping Mass intentions over a year, HPR. 1935, Aug. 1191.

Takes two years to satisfy testator's Mass intentions, CST. IV, 199.

Excessive number of stipends, ER. 1932, Feb. 185-189.

Responsibility for Masses lost by transferee in business venture, CST. I, 228.

Sending Mass stipends away, CST. V, 156.

Stipends can be sent outside of diocese without bishop's permission, HPR. 1921, Oct. 61.

Transferring only part of stipend, ER. 1920, Mar. 335-338.

Massstiocnd belongs to celebrant, HPR. 1928, Nov. 186; 1929, Aug. 1229; Oct. 66.

High Mass stipend per se belongs to celebrant, ER. 1938, Aug. 177-178.

High Mass stipend and the assistant, ER. 1939, Apr. 349-355.

Mass stipends between pastors and assistants, ER. 1938, Jan. 69-72.

What stipend for priest who savs funeral Mass for pastor? HPR. 1921, Aug. 1052.

Some exceptions to entire stipend to celebrant, HPR. 1921, Sept. 1144.

Assistant says Missa pro populo for pastor, HPR. 1930, Aug. 1211-

Can a stipend be divided by the pastor? HPR. 1928, Oct. 75.

Some doubts on Mass stipends, ER. 1935, Jan. 78.

Reducing Mass obligations because of lowered interest rate, CST. V, 154.

Holy Communion

Books of Special Reference

Manuals of Moral Theology.

Anglin, Thomas F., "The Eucharistic Fast," C. U. Press, 1941.

Clinton, Connell, "The Pascal Precept," C. U. Press, 1932.

Henry, Joseph A., "The Mass and Holy Communion: Inter-Ritual Law," C. U. Press, 1926.

Articles and Consultations

Giving large host to communicant after Benediction, ER. 1934, Apr. 433; 1936, Feb. 191 ; IIPR. 1922, May 902.

How to give communion to the sick in hospitals and other institutions, ER. 1924, June 639-640; 1927, Feb. 209; 1929, Sept. 316; 1935, Jan. 76-78; 1937, Dec. 588; 1938, Apr. 478; HPR. 1924, June 970; 1929, June 1000; 1941, July, 1037.

Ceremonies in giving communion to sick in their homes, ER. 1941, Feb. 168-169.

Cassock and surplice on sick calls, ER. 1940, beb. 163.

Non-renewal of Species for three weeks, ER. 1927, Nov. 529.

Communion before operation, HPR. 1929, Jan. 409; 1939, Apr. 735; ER. 1919, Dec. 713.

Throat trouble and communion fast, HPR. 1940, Dec. 320.

Viaticum to person with cancerous throat, CST. IV, 128.

Troublesome false teeth and communion, CST. Ill, 165.

Communion cloth obligatory with paten? HPR. 1938, Apr. 743: 1940, July 1135; ER. 1936, Oct. 417-418; 1940, Mar. 275; July 90; 1946, Sept. 225; 1947, Mar. 230.

Sufficient disposition for child's first communion, ER. 1920, Jan. 72-73.

Communion to feeble minded persons, HPR. 1940. May 896.

Non-fasting communicants, ER. 1919, Nov. 522-532.

Salt at baptism does not break fast, ER. 1918, Mar. 322.

Does dissolved hard candy break communion fast? or lipstick? ER. 1944, Nov. 394.

Did he break fast? HPR. 1927, May 871.

Poloris plaster for toothache, and communion fast, ER. 1945, Feb. 140.

Fast and consuming Benediction host, ER. 1923, Oct. 436.

Eucharistic fast and the stomach pump, ER. 1925, Sept. 316-319.

Nose spray, stomach pump, and the Eucharistic fast, 11 PR. 1925, June 976-978.

Eucharistic fast and medicated tablets, ER. 1936, Dec. 634-637; 1946, Mar. 228; HPR. 1941, Nov. 188.

A case of communion without fast, HPR. 1923, Nov. 169-171.

Gets headache when observing Eucharistic fast, HPR. 1924, Feb. 512:

Able to attend Mass but not to keep fast, HPR. 1934, June 973.

Breaking fast before first communion, ER. 1932, June 642; Aug. 187.

Can sick receive communion daily without fasting? ER. 1927, Feb. 209; cfr. also delegated faculties listed at end of manual.

Viaticum and protracted illness, ER. 1931, June 632.

Requesting dispensation to communicate daily without fasting, ER. 1921, Aug. 186; 1928, Nov. 537-538; Dec. 648.

Recent relaxation in law of Eucharistic fast, ER. 1923, Aug. 183-189.

Fast and daylight-saving time, ER. 1918, May 565-567.

Origin of extended Easter duty season, ER. 1924, July 91.

Can first communion be postponed beyond Easter season? ER. 1940, June 536.

No Code penalties for missing Easter dutv, ER. 1932, Nov. 515-521.

Gave communion on Holy Saturday two hours before Mass, CST. IV, 238.

Communion to sick on Holy Thursday, ER. 1940, Feb. 168.

Can communion be taken to the homes of non-sick? HPR. 1929, Mar. 649.

Confession and Indulgences

Books of Special Reference

Manuals of Moral Theology.

Simon, J., "Faculties of Pastors and Confessors for Absolution and Dispensation," New York: Wagner, 1922.

Kelly, James P., "The Jurisdiction of the Simple Confessor," New York: Benzinger, 1928.

Dargin, Edward V., "Reserved Cases According to the Code of Canon Law," C. U. Press, 1924.

Linahen, Leo J., "De Absolutione Complicis in Peccato Turpi," C. U. Press, 1942.

Hagedorn, Francis E., "General Legislation on Indulgences," C. U. Press, 1924.

Preces et Pia Opera.....indulgentiis ditata..... Vatican Press, 1938.

Articles and Consultations

Can priests confess to one another outside of diocese? ER. 1942, Apr. 292-294.

How often must priest avail himself for confessions of faithful, ER. 1923, Aug. 194-196.

His confession faculties have inadvertantly expired, CST. V, 181.

A case of supplied confession faculties, CST. II, 217.

Is chaplain's permission necessary to hear patient's confession? ER. 1931, Nov. 526.

Absolution repeatedly to the unconscious and the dying, ER. 1925, Dec. 630; 1935, Apr. 422; HPR. 1928, Feb. 539.

Absolution of fallen-away Catholic in danger of death, HPR. 1922, May 891-892.

Absolved *in globo* before engaging in battle, CST. V, 218.

What is meant by gravis, diuturna et salutaris poenitentia? CST. IV, 158.

False accusation of solicitation, ER. 1918, Nov. 458-463; 1919, Jan. 61-69.

Can Ordinary reserve ratione peccati a sin reserved by Code ratione censurae? ER 1931, Feb. 190-192.

Episcopal reservations during Easter season, HPR. 1920, Apr. 643.

A missionary meets various reserved cases, CST. V, 183.

Absolving penitent who confesses sin of solicitation, HPR. 1927, July 1227.

Habitually hears confessions in strange tongue, CST. IV, 194.

Confessing women outside the confessional, ER. 1934, Feb. 159-161; HPR. 1930, Sept. 1327.

Confessing hard of hearing penitents, CST. Ill, 194; HPR. 1930, Sept. 1327.

Sale of indulgenced or blessed object, ER. 1926, Aug. 187; 1928, Apr. 429.

Can I gain an indulgence on borrowed rosary? HPR. 1935, June 966.

Meaning *of* general absolution and indulgenced blessing, ER. 1937, May 522-529.

List of the so-called Apostolic Indulgences, HPR. 1928, Sept. 1329.

Authorization to erect stations, ER. 1938, Feb. 175; HPR. 1935, Feb. 515.

How to say the stations, HPR. 1937, July 961.

No specified prayers required for station indulgences, ER. 1933, Jan. 73-74; HPR. 1922, June 1013.

Moving stations temporarily, HPR. 1931, Oct. 68.

Moving stations to another chapel, HPR. 1921, Apr. 639.

How stations lose their blessings, HPR. 1941, Feb. 532; 1923, May 860.

The 1925 Jubilee year, ER. 1924, Nov. 520-522; Dec. 561-572; 1925, Ian. 11-22; Feb. 113-125; Mar. 266-275.

Extension of 1925 Jubilee, ER. 1926, May 449-460; June 628.

Extreme Unction

Books of Special Reference

Manuals of Moral and Pastoral Theology.

Kilkcr, Adrian J., "Extreme Unction," C. U. Press, 1926.

Articles and Consultations

Is old age sickness for Extreme Unction? ER. 1933, Jan. 57.

Extreme Unction before operation, ER. 1920, Feb. 221; Apr. 454-457.

Repeating Extreme Unction, ER. 1932, Jan. 41-54; June 627-632; CST. II, 306.

Can Apostolic Blessing be given repeatedly to the dying? HPR. 1940, Sept. 1357.

Extreme Unction to the unconscious, CST. V. 228.

Last sacraments to unknown victims of accidents, HPR. 1937, Dec. 308; 1939, June, 964-967.

Accidents and Extreme Unction, HPR. 1922, June 1013.
Surplice and stole on sick calls, HPR. 1937, July 966.
Commendatio animae can be said in English, HPR. 1925, July 990.
How to inform patient of approaching death, ER. 1932, June 637-639.

Holy Orders

Books of Special Reference

Mocder, John M., "The Proper Bishop for Ordination and Dimissdrial Letters," C. U. Press, 1935.
Gannon, John M., "The Interstices Required for the Promotion to Orders," C. U. Press, 1944.
Hickey, John J., "Irregularities and Simple Impediments in the New Code of Canon Law," C. U. Press, 1920.
Vogelpohl, Henry J., "The Simple Impediments to Holy Orders," C. U. Press, 1946.
Gallagher, Thomas R., "The Examination of the Qualities of the Ordinand," C. U. Press, 1944.

Articles and Consultations

Episcopus proprius ordinationis, ER. 1934, Apr. 352-365.
Domicile to determine ordaining bishop, ER. 1920, Mar. 341-344.
Proper bishop of ordinand who was incardinated by reason of first tonsure into none-home diocese, HPR. 1937, Feb. 522.
Candidate for orders without cniscopus proprius, HPR. 1921, Oct 62.
Incardination question, HPR. 1923, June 969.
Irregularity from defective sight, ER. 1927, Dec. 646-649.
Throat malady and irregularity ex defectu, IIPR. 1928, Apr. 761-765.
Slight epilepsy an impediment to orders? CST. HI, 141.
Can a seminarian or religious act as subdeacon, CST, II, 29; HPR. 1933, Jan. 403.
Layman acting as subdeacon, HPR. 1922, July 1125.

Marriage

Reading material on this subject is found in the body of the Manual itself in the chapter on Marriage.

Sacramentals

Books of Special Reference

Manuals of Moral Theology after *De Sacramentis in Genere.*

Paschang, John L., "The Sacramentals According to the Code of Canon Law," C. U. Press, 1925.

Articles and Consultations

Who blesses sacred vestments? HPR. 1924, Mar. 622.

Is it necessary to bless liturgical candles? ER. 1942, Nov. 393.

Can palms be blessed in hospital chapels? ER. 1933, July 82.

Ashes imposed at home or on following Sunday, ER. 1940, Feb. 168.

Are holy water and specified prayers required for the validity of sacramentals? HPR. 1926, Apr. 728; 1935, Aug. 1186; 1937, Dec. 304; ER. 1942, Oct. 312.

Protestants and sacramentals, ER. 1930, Mar. 315; 1931, July 39-47.

Taking blessed ashes home, ER. 1928, Sept. 305.

Sale of sacred objects, HPR. 1928, Mar. 642.

Churching an illegitimate mother, CST. I. 11.

Cfr. also material under indulgences.

Sacred Places

Books of Special Reference

Coronata, Matthaeus a., "De Locis et Temporibus Sacris," Turin: Marietti, 1922.

Ziolkowski, Thaddcus S., "The Consecration and Blessing of Churches," C. U. Press, 1943.

Power, Cornelius M., "The Blessing of Cemeteries," C. U. Press, 1943.

Gulczynski, John T., "The Desecration and Violation of Churches," C. U. Press, 1942.

Feldhaus, Aloysius H., "Oratories," C. U. Press, 1927.

Bliley, Nicholas M., "Altars According to the Code of Canon Law," C. U. Press, 1927.

Articles and Consultations

Blessed churches and titular feasts, ER. 1929, Mar. 308-310.

Blessed churches and anniversary of dedication, ER. 1931, Feb. 198; 1934, Mar. 317.

Titular feasts of chapels of ease, ER. 1939, Mar. 272.

Can a low Mass be said in a parish church on Holy Thursday if no services are held the following two days? CST. I, 17.

Holy Week services in small churches, ER. 1931, Apr. 404-405.

Status of chapels of ease, HPR. 1926, Nov. 187.

Flags in the sanctuary, ER. 1918, Oct. 421; Dec. 627-628/ 1926, Sept. 307.

Dancing in church halls, HPR. 1927, Oct. 72.

Sleeping rooms above chapel, ER. 1946, June, 456.

Minor basilicas, ER. 1928, Jan. 1-19.

Collections at church door, ÈR. 1928, Dec. 647; Jurist, 1943, Jan. 152.

Holy Week services in chanels, HPR. 1923, May 857-859; ER. 1935, Mar. 300; 1939, Feb. 165.

Reconsecrating portable altars, ER. 1044, Nov. 301.

Fractured altar stone, ER. 1918, June 683-684.

Did the altar lose its consecration in these cases? CST. II, 121 ; III, 250, 272.

Privileged altars, cfr. "Indulgences."

Ecclesiastical Burial

Books of Special Reference

Manuals of Moral Theology under *De Sepultura Ecclesiastica* found after *Censures,* or under *Precepts of the Church.*

O'Reilly, John A., "Ecclesiastical Sepulture in the New Code *of* Canon Lawt" C. U. Press, 1923.

Kerin, Charles A., "The Privation of Christian Burial," C. U. Press, 1941.

Articles and Consultations

The Code law on Christian burial, ER. 1922, July 12-26.

Burial of a fetus, ER. 1939, Mar. 273.

Burial of amputated limbs, HPR. 1933, Dec. 291 ; 1939, Aug. 1219; ER. 1933, Dec. 638.

Cremation ban theory and application, CST. II, 33.

A case of cremation in the last will ignored by heirs, ER. 1926, Feb. 183.

Burial in non-Catholic cemetery, ER. 1919, Jan. 82-83; 1924, Oct. 419; 1930, Nov. 535; 1934, Sept. 302; HPR. 1936, Oct. 79-81; 1938, July, 1070.

Blessing graves in a communitv cemetery, ER. 1937, June 626-627; HPR. 1933, Nov. 185.

Desecration of cemeteries, HPR. 1924, Nov. 171; ER. 1933, Dec. 638.

Burial of non-Catholics in Catholic cemetery, ER. 1922, July 19; 1932 Feb. 192-195; 1936, Oct. 79.

Rubrics of funerals, HPR. 1935, Jan. 409.

Proper prayers and hymns in church at funerals, ER. 1941, Feb. 169-170; July 51.

English prayers at funerals, HPR. 1932, July 1076.

Funerals of children, ER. 1925, July 82.

Church burial for boy 5 and another 9 years old, CST. II, 294.

Funeral during Forty Hours, ER. 1933, Jan. 77; Feb. 194; HPR. 1933, Feb. 522.

Funeral during last three days of Holy Week, ER. 1932, Mar. 318.

May any funeral be conducted in hospital chapels? ER. 1933, July 81.

Funeral of non-parishioners who have pews, HPR. 1926, Sept. 1303.

Parochial rights and the funeral Mass, ER. 1919, Jan. 80-82.

Rights of proper pastor to funeral fees, HPR. 1930, Nov. 182-184.

Sale of cemetery lots, ER. 1928, Apr. 430-432.

Christian burial and negligent Catholics, ER. 1926, Dec. 654-657; 1036, Aug. 189-194; HPR. 1921, June 841; 1930, May 867; 1941. Jan. 434; 1942, July 951.

Burial of notorious criminals, HPR. 1931, Apr. 750-751.

Burial *of* suicides, CST. HI, 212.

Burial of a mason, CST. IV, 71.

Some practical questions concerning Christian burial, ER. 1940, July 1-16.

Dying convert wants Protestant funeral, HPR. 1934, Dec. 290.

Priests at non-Catholic funerals, HPR. 1938, Apr. 759; 1941, June 940.

Sunday Mass—Fast and Abstinence

Books of Special Reference

Manuals of Moral Theology under *De Praeceptis Ecclesiae,* and partly under *De Tertio Decalogi Praecepto.*

Guiniven, John J., "The Precept of Hearing Mass," C. U. Press, 1942.

Coronata, Matthaeus a., "De Locis et Temporibus Sacris," Turin: Marietti, 1922.

Articles and Consultations

The law of abstinence explained, ER. 1939, Feb. 109-131.

The Code law on fast and abstinence, ER. 1918, Jan. 56-63; Feb. 201-203; 208-209.

How far can pastors dispense from fast and abstinence? ER. 1932, Apr. 426-427.

A pastor dispenses from abstinence, ER. 1933, Sept. 286-288.

Travel in itself does not exempt from fast, ER. 1932, June 634.

Old age alone docs not exempt from abstinence, ER. 1937, Dec. 594; 1938, Feb. 174; HPR. 1938, Mar. 627.

On days of fasts only, can meat be eaten repeatedly by persons exempt from fast? HPR. 1923, Dec. 284; 1927, June 1100.

Meaning of "condiment or seasoning of meat," HPR. 1921, May 746.

Cooking meat with food on Fridays, HPR. 1928, Apr. 754.

Liquidum non frangit jejunium, ER. 1939, Mar. 220-224.

Pork and beans and abstinence, ER. 1933, Jan. 67.

Frog legs and abstinence, ER. 1919, Dec. 715.

Gelatine and abstinence, ER. 1929, Aug. 188.

Jello and abstinence, ER. 1918, Apr. 434.

Oleomargarine and abstinence, ER. 1918, 434.

Sea fowl and lenten food, HPR. 1933, June 973.

White meats and abstinence, ER. 1928, June 639-640.

Patronal feast and Friday abstinence, ER. 1921, Sept. 303; 1919. Feb. 188; 1926, Apr. 408.

The workingmen's induit, ER. 1929, Feb. 187-190; 1930, Mar. 295-301; 1936. fan. 66-69; 1942, Mar. 125-131; HPR. 1925, Dec. 292; 1928, Nov. 188; 1932, Dec. 295; 1935, June 966; 1940, June 1000.

Dispensation from fast and abstinence on civil holidays, ER. 1932, Jan. 89-90; Feb. 190.

The Bulla Cruciata as applicable to the U. S., ER. 1925, Jan. 87-88.

Wednesday of Holy Week is not a day of abstinence, ER. 1940, Jan. 64-66; IIPR. 1934, July 1083.

Some moral reasons exempting from fast, ER. 1930, Nov. 539-541.

Priestly fasts on ember Saturdays, ER. 1928, Aug. 201.

Catholics offering meat'to Protestants on Fridays. HPR. 1921, Jan. 320.

Divine Worship

Books of Special Reference

Manuals of Pastoral Theologj· and Manuals of Sacred Liturgy.

Cavanaugh, William T., "The Reservation of the Blessed Sacrament," C. U. Press, 1927.

Doolev, Eugene A., "Church Law on Sacred Relics," C. U. Press, 1931.

Articles and Consultations

Acting as witness at non-Catholic church wedding, CST. I, 145; ER. 1931, Sept. 312.

Priests at non-Catholic funerals, HPR. 1938, Apr. 759; 1941, June 940.

Priest assisting at marriage of non-Catholics, ER. 1934, Jan. 84; HPR. 1928, June 989.

Ritual prayers in the vernacular, ER. 1932, Oct. 416.

Carrying lunula to another church for Benediction, ER. 1919, July 96; 1934, Jan. 87; HPR. 1939, Dec. 326.

Carrying Blessed Sacrament back to home parish church after Benediction, ER.' 1928, May 521-523; HPR. 1924, Feb. 511; May 852.

Can consecrated species be carried to convent chapel weekly to evade weekly Mass? ER. 1928, Oct. 412-414; Dec. 649.

Who is responsible for custody of Blessed Sacrament in chapels? HPR. 1939, June 967.

Custody of the tabernacle key in lav communities. ER. 1938, Oct. 372.

Kerosene oil, electric light, and sanctuary lamp, ER. 1920, Feb. 230; Apr. 457-459; Aug. 180-182; HPR. 1922, Aug. 1242; 1923, May 861; 1929, Mar. 647.

What is solemn or public Benediction? ER. 1929, Mar. 317.

Ordinary's permission for Benediction, ER. 1935, Jan. 79-81.

Required number of attendants at Benediction, ER. 1932,

Apr. 431 ; 1940, July 90; 1945, Nov. 390; HPR. 1924. Sept. 1283.

Benediction twice a day, ER. 1931, Nov. 530; 1934, July 85; HPR. 1925, Dec. 289; 1933, Dee. 295.

Benediction twice on Sunday, ER. 1938, Apr. 373.

Ceremonies at private Benediction, ER. 1937, Nov. 497; 1940, Mar. 271.

Funeral during Forty Hours, HPR. 1933, Feb. 522.

Authentication of relics, ER. 1923, Sept. 299.

Traffic in relics, ER. 1923, Sept. 299.

Must oil stocks be blessed? HPR. 1926, Sept. 1303.

Do replatcd chalices need reconsecration? HPR. 1924, Sept. 1282'.

Sister sacristans, ER. 1926, Jan. 82-84.

Lay sacristans and sacred vessels, HPR. 1921, Feb. 430; 1924, Jan. 41l ; June 973.

Who washes church linens? CST. II, 96.

May women wash soiled purificators ? HPR. 1931, Dec. 294.

Teaching Authority of the Church

Books of Special Reference

Manuals of Moral Theology under *De Prohibitione Librorum,* or under *De Praeceptis Ecclesiae.*

Manuals of Pastoral Theologj- under *Sacred Preaching, Catechetical Instructions,* etc.

Kelleher, Stephen I., "Discussions with Non-Catholics." C. U. Press, 1943.

Jansen, Raymond J., "Canonical Provisions for Catechetical Instructions," C. (J. Press. 1937.

Cox, Joseph G., "The Administration of Seminaries," C. U. Press, 1931.

Heck, Theodore, "The Curriculum of the Major Seminary in Relation to Contemporary Conditions," C. U. Press. 1935.

Boffa, Conrad H.. "Canonical Provisions for Catholic Schools, C. U. Press, 1939.

Pernicone, Joseph M., "The Ecclesiastical Prohibition of Books," C. U. Press, 1932.

"Index Librorum Prohibitorum," Vatican Press, 1945.

Canavan, Walter J., "The Profession of Faith," C. U. Press, 1942.

Articles and Consultations

Priest preaching outside of his diocese, HPR. 1930, Apr. 752-753.

Attendance at non-Catholic schools, HPR. 1930, Mar. 624-626.

What does "editis" of c. 1384, §2 mean? HPR. 1936, June 970.

Episcopal imprimatur for holy pictures and indulgcnced prayers, ER. 1932, Jan. 81-82; July 185; 1933, Aug. 190-192.

Practical approach to the Index of Forbidden Books, ER. 1923, Feb. 191 ; Apr. 417.

Benefices and Institutions

Books of Special Reference

Golden, Henry F., "Parochial Benefices in the New Code," C. U. Press, 1921.

Connolly, Nicholas P., "The Canonical Erection of Parishes," C. U. Press,' 1938.

Mundy, Thomas M., "The Union of Parishes," C. U. Press, 1944.

Gass, Sylvester F., "Ecclesiastical Pensions," C. U. Press, 1942.

Haydt, John J., "Reserved Benefices," C. U. Press, 1942.

Godfrey, John A., "The Right of Patronage According to the Code of Canon Law," C. U. Press, 1924.

Articles and Consultations

Assistant pastorate a benefice? ER. 1927, July 74-79; Sept. 306-312.

The *congrua dos* required for a new parish, ER. 1919, Apr. 451-452.

Must a parish have a church? HPR. 1929, Mar. 645.

Dividing a parish, IIPR. 1926, Oct. 68.

Cfr. also the material under *Pastors.*

Temporal Goods of the Church

Books of Special Reference

Manuals of Pastoral Theology under *Bookkeeping,* etc.

Brown, Mr. Brendan F., "The Canonical Juristic Personality with Special Reference to Its Status in the United States of America," C. U. Press, 1927.

Goodwine, John "The Right of the Church to Acquire Property," C. U. Press, 1941.

Dohcny, William J., "Church Property: Modes of Acquisition," C. U. Press, 1927.

Bartlett, Chester J., "The Tenure of Church Property in the United States of America," C. U. Press, 1926.

Kremer, Michael N., "Church Support in the United States," C. U. Press, 1930.

Hannan, Jerome D., "The Canon Law on Wills," Philadelphia: Dolphin Press, 1935.

Dohcny, William J., "Practical Problems in Church Finance," Milwaukee: Bruce, 1941.

Martin, Thomas O., "Adverse Possession, Prescription and Limitation of Actions: The Canonical *Praescriptio,"* C. U. Press, 1944.

Cornyns, Joseph J., "Papal and Episcopal Administration of Church Property," C. U. Press, 1942.

Cleary, Joseph F., "Canonical Limitations on the Alienation of Church Property," C. U. Press, 1936.

Stenger, Joseph B., "The Mortgaging of Church Property," C. U. Press, 1942.

Heston, Edward L.» "The Alienation of Church Property in the United States," C. U. Press, 1941.

Miller, Newton T., "Founded Masses According to the Code of Canon Law," C. U. Press, 1926.

Articles and Consultations

Episcopal assessments on parishes, HPR. 1922, Apr. 794-796.

Non-support of Church and absolution, ER. 1923, July 83.

Collections at hospital Mass, ER. 1932, June 633.

Bishop is executor of charitable bequests, HPR. 1927, July 1222.

Diverting legacy to purpose other than determined by deceased, HPR. 1928, Mar. 641.

Executor of will refuses to donate chalice to shrine as desired by testator, CST. IV, 93.

Alienation of church property, ER. 1940, Feb. 167.

Mortgages, debts, leases, non-alicnation investments, church finance problems, Jurist, 1941, Apr. 97-107.

Sale of sacred objects, HPR. 1928, Mar. 642.

Is civil law on contracts binding in conscience? CST. II, 65, 86.

Trials in General

Books of Special Reference

Dugan, Henry F. "The Judiciary Department of the Diocesan Curia," C. U. Press, 1925.

Vaughan, William E., "Constitutions for Diocesan Courts," C. U. Press, 1944.

Burke, Thomas J., "Competence in Ecclesiastical Tribunals," C. U. Press, 1922.

Lvons, Avitus E., "The Collegiate Tribunal of First Instance," C. U. Press, 1932.

Glyn, John C., "The Promoter of Justice," C. U. Press, 1936.

Dolan, John L., "The Defensor Vinculi," C. U. Press, 1934.

Krol, John T., "The Defendant in Ecclesiastical Trials," C. U. Press, 1942.

Hogan, James J., "Judicial Advocales and Procurators," C. U. Press, 1941.

Coyle, Paul R., "Judicial Exceptions," C. U. Press, 1944.

Martin, Thomas O., "Adverse Possession, Prescription and Limitation of Actions: The Canonical *Praescriptio,"* C. U. Press, 1944.

Kealv, John J., "The Introductory *Libellus* in Church Court Procedure," C. U. Press, 1937.

Moriarty, Eugene J., "Oaths in Ecclesiastical Courts," C. U. Press, 1937.

Willett, Robert A., "The Probative Value of Documents in Ecclesiastical Trials," C. U. Press, 1942.

Lemieux, Delise M., "The Sentence in Ecclesiastical Procedure," C. U. Press, 1934.

Connolly, Thomas A., "Appeals," C. U. Press. 1932.

Feeney, Thomas J., "Restitutio in Integrum," C. U. Press, 1941.

Marriage Trials and Processes

Books of Special Reference

Labouré-Byrnes, "Procedure in Diocesan Matrimonial Courts of First Instance," New York: Benzinger Bros., 1947.

Doheny, William J., "Canonical Procedure in Matrimonial Cases (Formal Procedure)," Milwaukee: Bruce, 1938.

Doheny, William J., "Canonical Procedure in Matrimonial Cases (Informal Procedure)," Milwaukee: Bruce, 1943.

Bouscaren, T. L., "The Canon Law Digest" (section on summarized Rota marriage decisions), Milwaukee: Bruce, 1942.

Goldsmith, J. W., "The Competence of Church and State over Marriages—Disputed Points," C. C. Press, 1944.

Kay, Thomas H., "Competence in Matrimonial Procedure," C. U. Press, 1929.

Wanenmacher, Francis, "Canonical Evidence in Marriage Cases," Philadelphia: Dolphin Press, 1935.

Whalen, Donald W., "The Value of Testimonial Evidence in Matrimonial Procedure," C. U. Press, 1935.

Manning, John J., "Presumption of Law in Matrimonial Procedure," C. U. Press, 1935.

Kennedy, Edwin J., "The Special Matrimonial Process in Cases of Evident Nullity," C. U. Press, 1935.

Marx, Adolph, "The Declaration of Nullity of Marriages Contracted Outside the Church," C. U. Press, 1943.

Ramstcin, Matthew, "The Pastor and Marriage Cases," New York: Benzinger, 1945.

Cfr. also the material above under *Trials in General,* and the reference material in the body of this Manual in the chapter on *Marriage.*

Articles and Consultations

Rota costs of marriage annulments, ER. 1928, Dec. 643.

Submitting a ratum non-consummatum case to the chancery, HPR. 1928, Jan. 415.

A practical case involving c. 1971., ER. 1929, June 635-639.

Non-Catholic plaintiff and the marriage court, ER. 1931. 308-310; 1932, Jan. 68-73; 1934, July 75-84; Jurist, 1944, Oct. 623-626; 1946, July 378-400.

Procedure when a party is debarred from invoking the aid of the matrimonial court, HPR. 1929, Sept. 1326.

What if a non-Catholic, without intending conversion, petitions declaration of nullity of former marriage to marry present Catholic spouse? HPR. 1939, Nov. 169-171.

Must the parties be cited under c. 1990? ER. 1934. Oct. 414-416.

Can. 1990 and the 1936 Instruction, ER. 1938, Mar. 262-270.

Can summary trial of c. 1990-1992 be handled outside of court, evidence being gathered by the pastor? Jurist, 1945, July 441-447.

Summary marriage trials, Jurist, 1944, Jan. 1-53.

Slow expediting of marriage cases by curias, ER. 1946, Dec. 458.

Why civil divorce should precede ecclesiastical marriage trial, Jurist, 1944, Jan. 160.

Beatification and Canonization

Books of Special Reference

Mackcn, Thomas F., "The Canonisation of Saints," New York: Benzinger, 1909.

Articles and Consultations

The beatification and canonization of saints, ER. 1924. June 621-629.

Cfr. "The Catholic Encyclopedia" under appropriate captions.

Extrajudicial Processes

Books of Special Reference

Suarez, Emmanual, "De Remotione Parochorum," Rome, 1931.

Connor, Maurice, "The Administrative Removal of Pastors," C. U. Press, 1937.

Galvin, William A., "The Administrative Transfer of Pastors," C. U. Press, 1946.

Meier. Carl A., "Penal Administrative Procedure Against Negligent Pastors," C. U. Press, 1941.

Murphy, Edwin J., "Suspension *ex Informata Conscientia,"* C. I. Press. 1932.

McClunn, Justin D., "Administrative Recourse." C. U. Press. 1946.

Articles and Consultations

Removal of irremovable pastors, ER. 1935, Nov. 490-503.

Can a retired pastor live in the rectory of his former parish? HPR. 1924, Apr. 747.

Suspension ex informata conscientia, HPR. 1933, July 1085.

BIBLIOGRAPHY

Offenses and Penalties

Books of Special Reference

•Manuals of Moral Theology under *De Censuris.*

Roberti, Franciscus, "De Delictis et Poenis," Rome: Apollinaris, 1938.

Ayrinhac-Lydon, "Penal Legislation in the New Code of Canon Law," New York: Benzinger, 1944.

Kelly James P., "The Jurisdiction of the Confessor," New York: Benzinger, 1928.

Swoboda, Innocent R., "Ignorance in Relation to the Imputa* bility of Delicts," C. U. Press, 1941.

McCoy, Alan E., "Force and Fear in Relation to Delictual Imputability and Penal Responsibility," C. U. Press, 1944.

Eltz, Louis A., "Cooperation in Crime," C. U. Press. 1942.

Esswein, .Anthony A., "Extrajudicial Penal Powers of Ecclesiastical Superiors," C. U. Press, 1941.

Dargin, Edward V., "Reserved Cases .According to the Code of Canon Law," C. U. Press, 1924.

Stadalnikas, Casimir J., "Reservation of Censures," C. U. Press, 1944.

Kubelbcck, William J., "The S. Penitentiary in its Relation to the Faculties of Ordinaries and Priests," C. U. Press, 1918.

Moriarty, Francis E., The Extraordinary Absolution from Censures," C. U. Press, 1938.

Hyland, Francis E., "Excommunication, its Nature, Historical Development and Effects." C. U. Press, 1928.

Conran, Edward J., "The Interdict." C. U. Press. 1930.

Rainer, Eligius G., "Suspension of Clerics," C. U. Press, 1937.

Murphy, Edwin J., "Suspension *ex Informata Conscientia,"* C. U. Press. 1932.

Findlay, Stephen W., "Canonical Norms Governing the Deposition and Degradation of Clerics," C. U. Press, 1941.

Christ. Joseph J., "Dispensation from Vindicative Penalties," C. U. Press, 1943.

Leech, George L., "A Comparative Study of the Constitution *Apnstolicae Sedis* and the *Codex Juris Canonici,"* C. U. Press, 1922.

MacKenzie, Eric F., "The Delict of Heresy in its Commission, Penalization, Absolution," C. U. Press, 1932.

Goodwine, Joseph G·, "The Reception of Converts," C. U. Press, 1944.

Preuss, Arthur, "A Dictionary of Secret and Other Societies," St. Louis: Herder, 1924.

Quigley, Joseph, "Condemned Societies," C. U. Press, 1927.

Huscr, Roger J., "The Crime of Abortion in Canon Law," C. U. Press, 1942.

Murphy, George L., "Delinquencies and Penalties in the Administration and the Reception of the Sacraments." C. U. Press, 1923.

Linahen, Leo J., "De Absolutione Complicis in Peccato Turpi," C. U. Press, 1942.

Smith, Mariner T., "The Penal Law for Religious," C. U. Press, 1935.

Riesner, Albert J., "Apostates and Fugitives from Religious Institutes," C. U. Press, 1942.

McClunn, Justin D., "Administrative Recourse," C. U. Press, 1946.

Articles and Consultations

Evolution of ecclesiastical penal legislation, Jurist, 1943, Oct. 602-612.

A case of participation in censured offenses, HPR. 1937, Apr. 738-740.

A case of ignorance of censure, ER. 1930, Mar. 309-311.

Can sacramental absolution always be granted in the case of ignored censures? HPR. 1932, Mar. 631 ; 1931, Feb. 517.

The law on reservations, ER. 1922, June 558-586.

Are censures reserved when imposed bv bishop's precept? HPR. 1928, Feb. 535 ; 543-545 ; June 988.

Can a pastor communicate to his assistant the faculty to absolve from a censure prior to marriage? HPR. 1931, Feb. 521; 1922, Dec. 291.

Can a bishop reserve ratione peccati a delict reserved by law to the Pope ratione censurae? HPR. 1921, July 944; 1931. May 869-870.

Public prayers for deceased non-Catholic dignitary, ER. 1945, Sept. 220.

How to repair scandal for marrying outside the Church, HPR. 1929, Aug. 1223.

Absolving and dispensing powers in periculo mortis, ER. 1931, Sept. 255-277; 1943, May 376-379.

What does "durum" mean in c. 2254? HPR. 1924, Aug. 1181; 1932, Mar. 632.

What is meant by gravis, salutaris et diuturna poenitentia? CST. IV, 158.

Suitable penance when absolving from censures, ER. 1944, Apr. 308.

Practicability of reserved cases, ER. 1921, Mar. 291-293; May 521-524.

Internal and external forum and censures, HPR. 1936, Feb. 527-530.

Absolution from censure by phone, ER. 1921, July 77.

No oenalty in Code for missing Easter duty, ER. 1932, Nov. 515-521.'

Meaning of clerical suspension, HPR. 1940, Dec. 319.

Can a deposed cleric ask for diocesan support? CST. IV, 1.

Must material heresy converts be absolved from censure? ER. 1924, July 92; 1926, Mar. 315.

Procedure in receiving convert into Church, the other spouse remaining non-Catholic, ER. 1926, June 633-634.

Absolving a repentant Catholic returned from heresy, HPR. 1932, Mar. 652.

Meaning of "speciali modo" of c. 2381, §1, ER. 1936, Apr. 410.

Did not know book was forbidden, HPR. 1921, Dec. 277-279.

Forbidden books and students, HPR. 1935, Nov. 182.

Is marriage before a civil magistrate censured? ER. 1925. Sept. 314-316; 1930, Jan. 72.

Two Catholics marry before minister—censured? HPR. 1931, Apr. 752-756.

Penalties for marrying outside the Church, ER. 1939, May 462-466.

Second marriage before minister, ER. 1934, Feb. 173-175.

Second marriage before magistrate—censured? ER. 1921, Jan. 70-72.

Docs ignorance excuse from censure for marrying before minister? HPR. 1931, Feb. 517; 1946, Apr. 532.

Is Catholic father excommunicated who permits non-Catholic wife to raise children as non-Catholics for the sake of peace? HPR. 1932, Feb. 515.

Absolving a Freemason, ER. 1920, June 689; Oct. 416-417; 1928, Oct. 415; HPR. 1922, Aug. 1229-1232; 1931, June 977-978.

The Order of Odd Fellows, ER. 1923, May 519-520.
Societies implicitly condemned, ER. 1930, Feb. 188-190.
Y.M.C.A. and Holy Office, HPR. 1921, Dec. 290.
Absolving Knights of Pythias and Odd Fellows, HPR. 1922, Oct. 75.
What societies or brotherhoods are forbidden? HPR. 1925, Apr. 763.
Catholics and the Machabccs, HPR. 1929, Oct. 67.
Pvthian convert cannot afford to lose his insurance, CST. II. 38.
Censure in case of Order of DeMolay, Rainbow Girls, Daughters of Rebekah, of Woodmen, HPR. 1933, Jan. 404; Mar. 638.
Is it absolutio complicis? HPR. 1922, Jan. 419; 1929, Dec. 293.
Directing patient to abortion doctor, ER. 1928, Dec. 650.
Effectu sequuto and abortion, ER. 1923, Mar. 300.
Fear and abortion censure, HPR. 1922, Feb. 524-526.
Absolution from abortion, HPR. 1930, Nov. 184-185.
Belated retraction of advise on abortion, HPR. 1932, Oct. 73.
Cfr. also the material under "Confession."

ßooi One

ON GENERAL NORMS

Before proceeding to lay down the legislation particular to ecclesiastical persons, places, processes, delinquencies and penalties, as this is found in Bk. Il, Hi, IV, and \ respectively, the Code in Book I states certain rules, which, because they find application to each and every canon of the remaining Books, are called *general* norms. It is well that the student master these norms or rules from the beginning for he will have need to refer to them from time to time as fundamental principles of interpretation.

Book I is divided into six titles as follows: 1) On ecclesiastical laws; 2) On custom; 3) On the reckoning of time; 4) On rescripts; 5) On privileges; 6) On dispensations.

Obviously it docs not suflice to know how the law reads. One must also be able to answer such questions as: 1) has the law been promulgated? and if so, 2) is it a particular or general law? and if a particular law, 3) does it bind me in this locality? 4) how can the content of the law be correctly construed? 5) are there exceptions to this or that law by reason of a contrary custom, a privilege, an induit or a dispensation ? and if so, 6) how is such custom, privilege, etc. to be interpreted? 7) how is the beginning and end of an obligation or favor to be computed? etc.

It will be our purpose in this Book I to answer these and various other questions which are prejudicial to the correct understanding and application of the remaining legislation of the Code.

Chapter I

ECCLESIASTICAL LAWS

The component elements of a body of legislation are called laws *{leges).* In this sense the individual canons of the Code arc laws, as also arc papal constitutions, provincial and plenary council decrees, diocesan statutes, etc.

In this chapter we shall consider: 1) the nature of ecclesiastical laws; 2) their division; 3) their promulgation; 4) their author; 5) their subject; 6) their interpretation; 7) their cessation; 8) the nature of commands other than laws in the strict sense such as precepts, ordinances, instructions, etc.

ART. I.

Nature of Ecclesiastical Laws

An ecclesiastical law is a command promulgated by the competent ecclesiastical superior to his community.

1) It is a command, and in this respect a law differs from a mere counsel; 2) it is a command which has been *promulgated,* i. e., officially made known to his subjects by authority of the commanding superior; 3) it is a command of the *ecclesiastical* superior, for commands of the civil ruler are called civil laws; 4) it is a command given to a *community,* and in this respect a law differs from a precept which is a command given to an individual.

These several points will be further elaborated as we proceed.

ART. IL

Division of Ecclesiastical Laws

Ecclesiastical laws may be divided as follows:

1) *Universal* laws and *particular* laws. The former bind in the universal Church, the latter bind only a certain class of persons, or only in a certain locality.

2) *Moral* laws, *penal* laws and *mixed* laws. A *moral* law binds directly in conscience so that its violation involves sin of itself.

All ecclesiastical laws are moral laws saving the constitutions of certain religious which are purely penal. A *penal* law likewise binds in conscience but only *indirectly,* the sin consisting in not submitting to punishment in the event the transgression is discovered and the penalty meted out. A *mixed* law is one which is both moral and penal at the same time. The latter half of Bk. V contains the penal laws of the code.

3) *Territorial* laws and *personal* laws. A territorial law has no force outside the place for which it is intended; a personal law follows the subject everywhere.

Ecclesiastical laws are presumed to be territorial, not personal, unless the contrary is evident. Thus, the constitutions of religious organizations are personal laws. (c. 8, §2).

4) *Prospective* laws and *retroactive* laws. Prospective laws look to the future, and the vast majority of all laws are of this nature. Retroactive laws look to the past and affect acts placed prior to the law's enactment.

No ecclesiastical law is to be considered retroactive unless it contains an express clause to that effect (c. 10).

5) *Invalidating* laws and *disqualifying* laws. The former *directly* invalidate the *act* placed in contravention of the law; the latter directly incapacitate the *person,* as in the case of most marriage impediments.

No ecclesiastical law is to be considered invalidating or disqualifying unless the law in question expressly or equivalently states this to be so (c. 11).

6) *Certain* laws and *doubtful* laws. A law is certain when there is no doubt concerning its existence or meaning; otherwise it is doubtful.

Ecclesiastical laws, including those which are invalidating and disqualifying, do not bind in a doubt of *law.* In a doubt of *fact* the Ordinary can dispense provided there is question of laws from which the Roman Pontiff is wont to dispense (c. 15). Thus, the Roman Pontiff does not dispense from the impediment of consanguinity when it is doubted if the parties to a marriage are brother and sister.

ART. III.

The Promulgation of Laws

Ecclesiastical laws take effect only after their promulgation (c. 8). The reason is that a law is by its very nature a rule of conduct; this it cannot be so long as it remains unknown.

The *promulgation* of a law differs from its *divulgation* among the populace. The official act by which the lawgiver manifests his will to the subjects constitutes promulgation; the transmission of knowledge of the law to the majority of the subjects constitutes its divulgation.

The laws of the Holy See arc promulgated by their insertion in the official periodical entitled: *Acta Apostolicae Sedis,* in some particular case the Pope may determine another mode of promulgation (c. 9).

Nothing in the nature of things forbids the lawgiver to decree that his law should become binding from the moment it is promulgated, even before it is divulged. But canon 9 allows a *vacatio* of three months between the promulgation of the laws of the Holy See and their enforcement. The three months are to be computed from the date which appears on the number of the *Acta* which carries the law. In some particular case a longer or shorter *vacatio* may be prescribed, but this must be expressly stated (c. 9). Thus, one year's grace (dormancy) was allowed in the case of the Code before it became law.

The *decrees of plenary and provincial councils* are promulgated in the manner decided upon by the council. The length of their abeyance is also left to the council (c. 291, §1).

Episcopal lazus are promulgated in the manner determined by the bishop. Unless the contrary is stated, they begin to bind at once (c. 335, §2).

ART. IV.

Superiors with Legislative Power

The following are the lawgivers in the Church within the limits described :

1) The Roman Pontiff can legislate both for the universal Church and for any part thereof;

2) An *ecumenical council's* powers are co-extensive with those of the Pope.

3) The *Roman Congregations,* acting by authority of the Pope, issue decrees and instructions having the nature of administrative legislation (cfr. p. 97).

4) A *plenary* council legislates for all the provinces of a nation.

5) A *provincial* council legislates for all the dioceses of a province.

6) Residential bishops, vicars and prefects Apostolic, abbots

and prelates *nullius,* and permanently appointed administrators Apostolic, legislate for their respective territories.

7) General *chapters* in exempt clerical religions can make laws for their religious subjects.

There arc no other lawgivers in the Church save those here described.

ART. V.

Persons Subject to Ecclesiastical Laws

All are subject to the laws of the Church saving the following:

1. *Exempt from all ecclesiastical laws* are:

a) Unbaptized persons, because only through baptism docs one become a member of the Church of Christ and subject to her jurisdiction (c. 12; 87) ;

b) Children under seven years of age, even though they have attained the use of reason. These are not held to purely ecclesiastical laws, and as a consequence it would be permitted, e.g., to serve them meat on a day of abstinence. But where an ecclesiastical law merely restates the divine law, or explains it, children under seven, provided they have the use of reason, are held to such laws, e. g., concerning annual confession and communion (c. 12) ;

c) Persons who habitually lack the use of reason (c. 12) ;

d) Baptized non-Catholics arc expressly exempt from the Catholic form of marriage and from the impediment of disparity of cult so long as they do not marry Catholics (c. 1099, §2; 1070, §1). In no other place does the Code exempt baptized non-Catholics from its laws. And it may be stated as a general principle that *per se* these individuals arc subject to the laws of the Church insofar as they have received valid baptism, no matter in what sect. For through baptism they have become members of the true Church of Christ, i. e., the Catholic Church. But lest material sins be multiplied without necessity, the Church is presumed, according to the common teaching of theologians, to exempt baptized non-Catholics from those laws which refer directly to personal sanctification, e. g., the laws of fast and abstinence, the observance of holydays, etc. But to all other laws which do not fall into this category, i. c., laws which are directed principally to safeguarding public order in the Church, e.g., marriage impediments, penal laws, etc., baptized non-Catholics are held. Hence, a marriage contracted between two

baptized non-Catholics who are first cousins would be invalid. However, *mala fide* baptized non-Catholics, e.g., apostate Catholics, do not enjoy the exemption here described: *nemo ex propria maliflaw commodum reportari debet,* i.e., no one should profit by his crime.

2. *Exempt from local laws* are those persons whom the Code calls *peregrini* (c. 13, §2;c. 14). Let us call such persons transients. A person is called a transient *(peregrinus)* in a place where he has neither a domicile nor a quasi-domicile, provided he has a domicile or quasi-domicile elsewhere. For if he has nowhere a domicile or quasi-domicile, he is a *vagus* (c. 91). We shall see under c. 92 (cfr. p. 127) how a domicile and quasi-domicile arc acquired and lost.

Transients are exempt from local laws under the following conditions:

1) They are not held to the particular laws of their home territory while they are absent from home. But to this rule there are two exceptions. They will be held to such laws if the violation of the law proves detrimental at home, e. g., the law of residence binding upon beneficed clerics; or if the law is a personal law, e.g. a ban on the clergy against attending theatres even outside of the diocese.

2) They arc not even held to the laws of the territory in which they happen to be staying, unless there is question of a law which aims at preserving public order, e. g., regulations determining precedence in processions; or unless the law determines the solemnity *of* an act. Instances of the latter kind of particular law will be difficult to find since the common law very thoroughly covers the subject of the formalities required for the validity of acts, e. g., marriage impediments, judicial procedure, etc., unless we except financial contracts.

3) They arc held to the common law if this is observed in the place of their visit and even though it is not enforced in their home territory, c. g., a visitor from the United States to Italy would be bound to attend Mass on the Feast of the Epiphany. But if the common law is not observed in the place of their visit, they arc exempt also from the common law, e.g., a visitor from Italy to the United States would not be bound to hear Mass on the Feast of the Epiphany.

4) *Kagi,* i.e., persons who have nowhere a domicile or quasi-domicile, are held to all laws, both universal and particular which are in force in the place where they are staying.

We may conclude that only they in general must observe

particular local laws who have a domicile or quasi-domicile in the place, and who arc actually in the territory. Such persons are called *incolae* (residents). Add to this class *vagi* as we have already said (c. 13, §2).

3. *Excused* from the observance of ecclesiastical laws during the time the excusing cause continues arc those who are impeded from observing the law by reason of any one of the following circumstances: 1) inculpable ignorance, error, inadvertance, or forgetfulness (c. 2202); 2) physical force (c. 2205, SI); 3) grave fear (c. 2205, §2); 4) moral or physical inability which the Code calls *grave incommodum* and *necessitas* (c. 2205, §2).

However, *if* there is question of invalidating or disqualifying laws, ignorance, error, etc. cannot be alleged as an excuse. And so a marriage, c. g., contracted under an invalidating impediment of which one or both parties were ignorant remains invalid (c. 16, $1)·

ART. VI.

Interpretation of Ecclesiastical Laws

We must distinguish between authentic and private interpretation of ecclesiastical laws.

§1. Authentic Interpretation (c. 17).

Only the following may give an authentic interpretation to the law: I) the lawgiver himself; 2) the lawgiver's successor; 3) those whom he or his successor has commissioned to issue authentic interpretations, e. g., the Pontifical Committee for the Authentic Interpretation of the Canons of the Code, referred to hereinafter either as *Pont. Comm, or Code Comm.*

An authentic interpretation has the force of law. If a general interpretation, it binds all the subjects of the law; if a particular interpretation, it binds only those to whom it is directed. General authentic interpretations must be published in the *deta dfiostolicae Sedis,* and they go into force three months after their publication. But if the interpretation is simply a declaratory one (cfr. p. 94) it need not be published, and it is retroactive.

A particular authentic interpretation may be given by way of judicial sentence rendered by the court, or it may be given extra-judicially cither by the Code Commission, or, as most often happens, by some Roman Congregation (administrative interpretation of the law). In any of the cases here cited the interpretation affects only

the persons for whom it is intended, although it can serve as a directive, not preceptive, norm for everyone else, provided the cases are similar in every respect.

§2. Rules of Private Interpretation (cc. 18-21)

In the absence of an authentic declaration concerning the meaning of the law, anyone may interpret the law for himself, provided he observe the rules set down by the lawgiver in c. 18-21. The administrative private interpretations of superiors are binding on their subjects, however, but recourse is permissible *in devolutivo*.

1. Ecclesiastical laws must be understood in the light of their words, viewed in their usual and most known signification, and taking into consideration both the text and the context of the law. This is known as the *grammatical* rule, and it differs from the *logical* rule of interpretation which we shall consider next.

When applying the grammatical rule, private individuals may give a *declaratory* and *comprehensive,* but not an *extensive* or *restrictive* meaning to the law. A *declaratory* interpretation is one which explains a law which is clear in itself and solves only what is a *negative* doubt. A *comprehensive* interpretation is one which explains away a real *positive* doubt by retaining the proper meaning of the words of the law, either by giving a broad construction to the law, e.g., where *filius* is taken to include both legitimate and illegitimate children, or by giving the words a strict interpretation, as where *filius* is taken to include only legitimate offspring. An *extensive* interpretation extends the natural and proper meaning of the words, e. g., where *religiosus* is construed to include novices. A *restrictive* interpretation excludes cases falling within the natural meaning of the wording of the law, e. g., where *clericus* docs not include cardinals in penal laws. Since both the extensive and restrictive interpretation in reality create a new law, they arc reserved to the lawgiver alone.

2. If grammatical interpretation fails in solving the doubt, one may have recourse to *logical* or *analogous* interpretation. He docs this: 1) by having recourse to parallel places of the Code if there are any; 2) by seeking the purpose or object of the law in the light of the circumstances which occasioned the law; 3) by ascertaining the mind of the lawgiver (c. 18).

An example of interpreting the law by resorting to parallel places of the Code is that which considers the recourse granted with suspensive effect to a religious against the decree of dismissal as in c. 647 to be necessarily taken within ten days, since this period

of time is expressly allowed for recourse granted with suspensive effect to the patron whose candidate for a benefice was rejected for the second time by the Ordinary in c. 1465 (S. C. Relig., July 20, 1923; *Acta* XV, 457).

The purpose of the law, and what amounts to the same thing, the mind of the legislator, may sometimes be ascertained by reading the preamble of the original constitution or decree from which the condensed canon of the Code was taken. Thus, c. g., c. 1486 forbids the Ordinary to accept a resignation if the resigning cleric adds the condition that he receive a pension from the benefice which he resigns. The purpose of the prohibition is to avoid the abuse of simony. Therefore, if no danger of simony is present, e. g., if the cleric resigns because he has incurred the ill-will *of* the parishioners, or because of poor health, the resignation may be accepted under the condition described.

3. As a rule, laws must be construed in their broad sense. But in three cases a strict interpretation is necessary: 1) in the case of penal laws, e. g., the penalties against the publication of printed matter does not apply to mimeographed material; 2) if the law restricts the free exercise of one's rights; for the rest, no two authors perhaps agree as to what the Code understands by this expression since every law in a sense restricts the free exercise of somebody's rights; 3) if the law forms an exception to the general legislation thus, the Pontifical Committee declared that c. 822, §4, which permits the celebration of Mass in private homes by way of exception, must be construed strictly (c. 19; Pont. Comm., Oct. 19, 1919; *Acta,* XI, 478).

4. When the law is *silent* on a certain point, private individuals may generally consider themselves at liberty to choose any course of conduct. But superiors may at times require a working norm, and the same applies to the judge. In such cases recourse must be had: 1) to laws enacted in kindred legal subjects, as where the rules determining the acquisition and loss of a domicile in a *diocese* are applied to the acquisition and loss of a domicile in an *abbacy nullius; 2)* to the general principles of law applied with canonical equity, i.c., with the spirit *of* Christian charity and mercy, thus, *Qui prior est tempore potior est jure; generi per speciem derogatur,* etc.; 3) to the style and practise of the Roman Curia, i. e., the sentences of the Roman Rota and the decisions of the Roman Congregations given in particular but similar cases ; 4) to the common teaching of approved canonists, where it must be remembered that six authors suffice to

create a common teaching, provided they each advance their own arguments in support of the opinion (c. 20).

5. Laws which have Been designed to guard against a common danger must be understood as binding even though in some particular case that danger be not present. Thus, although the reading of this or that book on the Index may not endanger the faith of a learned theologian, yet the latter is bound to the law, and requires an induit to read the forbidden book (c. 21).

ART. VII

Cessation of Laws

(c. 22-23)

Laws cease for the community: 1) through desuetude or non-observance; 2) through repeal on the part of the lawgiver.

The repeal may be explicit or. implied. Implicit repeal of a law is verified: 1) if the later law completely reforms the subject matter of the former law; 2) if the later law is directly contrary to the former law.

Particular laws are never implicitly repealed by a subsequent general law. This must be expressly stated by the lawgiver.

In doubt whether a former law has been repealed by the new legislation, the repeal is not to be presumed.

It should be noted that the rules given in this article apply only to any new post-Code laws.

ART. VIII.

Precepts, Decrees, Instructions, Rules, Ordinances, etc.

(c. 24)

Not all the commands of the superior may be called laws, since they may lack one or the other element essential to laws in the strict sense, e. g., they arc not given to a perfect community, or they are imposed only for a time, etc. Such is the case with precepts.

Precepts— A precept is a command given to an individual. The command is still a precept if given to several individuals, even to a perfect community, but not given in perpetuity.

A law is by its nature *perpetual* in the sense that it does not cease when the lawgiver goes out of office. A precept is by its nature *temporary,* unless: 1) it is imposed without respect to duration; and

2) it is issued by way of cn authentic document or in the presence of at least two witnesses. These are joint conditions.

A law is by its nature *territorial*; a precept is *personal* and binds the individual wherever he may go, unless the superior expressly states the contrary.

A law can be given only to a perfect community; a precept can be given to individuals, imperfect and perfect communities. That every community over which an ecclesiastical lawgiver presides (cfr. p. 90) is a perfect community capable of receiving a law all authors admit, e.g., the universal Church, a diocese, a clerical exempt religious organization. But as to whether such bodies within the Church as parishes, confraternities, seminaries, etc., arc capable of receiving a law there is hopeless controversy among writers. In practice there is not much difference between a law and a common precept: both are commands which continue indefinitely since the precept given to several persons is given before witnesses, or in a document. But in a doubt the superior may be asked concerning his intention, especially as regards the extra-territorial observance of the command. As regards the duration of the command, it can be repealed by the successor in office, whether it is a law or a precept. In certain religions the constitutions expressly provide that the common precepts of the superior cease with his going out of office.

Decrees, instructions, statutes, ordinances, etc.—The laws of ecclesiastical councils are called decrees, whether of ecumenical, plenary or provincial councils.

Decree is also the name given to certain regulations issued by the R. Congregations; at other times such acts are called instructions. Both the decrees and the instructions of the Congregations may be called laws. They are not in the nature of *formal* laws since the Congregations are not lawmaking bodies. They arc merely administrative agents of the R. Pontiff, their chief function being to enforce the formal legislation of the Code. But since the canons of the Code are worded in a very general way, and, therefore, only vaguely express the mind of the lawgiver in many cases, it devolves upon the Congregations to issue either so-called *declarations,* i. e., answers to doubts submitted, or detailed rules explanatory of the Code legislation *(decreta, instructiones).* These latter constitute *administrative* legislation. A similar interpreting power is vested in the administrative organs of civil governments, it being implied in their powers to enforce the formal legislation *of* Parliament, Congress, etc. In a sense the decrees and instructions bind to the same extent xs formal legislation, save that they cannot run counter to the canons

of the Code, nor to the formal interpretations of the Code Committee, and they lose all force when the formal law which they interpret ceases to exist. However, *instructions* are more directive, while *decrees* arc more preceptive in nature. It should be noted that according to the Motu proprio *Cum juris canonici,* which limits the interpreting powers of the Congregations, if new formal legislation should ever be deemed necessary subsequent to the promulgation of the Code, the Congregations competent in the matter will be informed to enact such legislation, hut it must be reduced to canons and inserted in the Code at the proper place. Xo such new canons have to date been forthcoming, administrative legislation appearing to have sufficed.

B}' *statutes* we understand laws issued by bishops in their diocesan synods. Sometimes the term is employed to signify the legislation peculiar to a province in a religious Order.

The commands of superiors falling short of laws are called precepts when given to individual subjects. If the command is given to the community, provided it is not a law but only a general precept, it is more commonly called a *rule,* or a *ruling.*

Chapter II

CUSTOM

In the interpretation of the written law custom perforins a three-fold function: 1) it may either introduce a new law or enlarge the obligation of the existing law *{consuetudo praeter legem)*; 2) it may repeal the existing law or lessen its obligation *{consuetudo contra legem)*; 3) it may give an authentic interpretation to an existing law *{consuetudo juxta legem).*

Hence, it is proper that Book I of the Code should include among its general norms a chapter on custom.

In its inception every society had to rely almost exclusively upon the customs and traditions of the people. As the written law became more perfect and gradually replaced the unwritten law, custom as a legal force correspondingly receded into the background. The result is that custom docs not play so vital a part in the social life of the Church today as in past centuries.

ART. I.

Custom Defined

In the material sense custom is the frequent and uninterrupted repetition of the same acts on the part of the community *{consuetudo jacti).* In the formal, or legal, sense custom is an unwritten law resulting from a uniform course of conduct on the part of the populace *{consuetudo juris).*

Custom differs: 1) from *written* law which proceeds from the lawgiver in written form; 2) from *traditional* law which likewise proceeds directly from the lawgiver but by word of mouth, and which comes down to us through the testimony of witnesses, although at present the tradition may be recorded in writing; 3) from *prescription* which is a uniform course of conduct giving rise not to law but to property rights; 4) from *usage* which is material custom before it has passed into formal custom; 5) from the *style* and *practise* of the ecclesiastical curia which arises from uniform acts of officials, not of the community.

ART. II.

Division of Customs

Customs are either:

1) Material customs *(consuetudines facti)*, or formal customs *(consuetudines juris),* as already explained;

2) *Universal* customs or *particular* customs, according to whether they obtain in the universal Church, or only in some part of the Church, or with a certain class of the faithful, e.g., a religious Order;

3) Customs beyond the law *(praeter legem),* customs against the law *(contra legem),* or customs in harmony with the law *(juxta legem)* as already explained ;

4) *Ordinary* customs which have existed less than 100 years; *centenary* customs which have existed for 100 years or more, and *immemorial* customs whose origin no living man can have learned directly from any eye-witness living or dead.

ART. III.

Requisites of a Lawful Custom

In order that custom may obtain the force of law four conditions are required: 1) that it be introduced by the community; 2) that the custom be reasonable; 3) that the consent of the lawgiver be present; 4) that the custom be prescribed.

§1. The Community

Only a community capable of receiving a law may introduce a custom having the force of law (c. 26). The reason is contained in the very definition of custom as unwritten law. If a community is not sufficiently large to be governed by written laws, it cannot be governed by unwritten laws, but only by precepts. How difficult it is to determine which communities in the Church arc competent to be governed by written laws, and hence also by custom, we have seen.

§2. Customs Must Be Reasonable (c.27).

Only reasonable customs can beget the force of law, since no law can bind in conscience unless it is in conformity with right reason.

'l'he following customs are not to be considered reasonable; 1) those which are in opposition to the divine law, c. g., the modern abuse of civil divorce and remarriage; 2) customs which arc expressly

reprobated by the written law, e. g., a custom which permits one parish to be governed by two or more pastors at the same time (cfr. c. 460) ; 3) customs which are subversive of ecclesiastical discipline, e. g., a custom which withdraws an ecclesiastical institution from canonical visitation on the part of any superior.

§3. Consent of the Lawgiver

In the Church custom obtains the force of law solely from the consent of the competent ecclesiastical superior (c. 25). The reason is that whereas in the State the people are considered the depositaries of all authority, and can therefore introduce a custom having the force of law without the sanction of the legislators, who arc the mere representatives of the citizens, yet in the Church by divine law all authority resides with the Pope and the bishops, or their lawfully constituted vicars, e. g., abbots and prelates *nullius.* And so, in the Church the faithful simply furnish the material for a custom, i. e., the repeated acts, and silently petition the lawgiver to endow their conduct with the force of law.

However, *explicit* consent to this or that custom is not required on the part of the superior, but *legal* consent suffices. Legal consent is that which the superior gives beforehand in a general way to any material custom possessing the qualifications specified by the lawgiver. Such legal consent is given in c. 27.

§4. Prescription of Custom

A custom to beget the force of law *contra* or *praeter legetn* must have continued for 40 years (c. 27, 28). But only a centenary or immemorial custom may militate against a written law which contains a clause explicitly forbidding (not reprobating) future contrary customs, (c. 27). A custom which the law positively reprobates is outlawed.

A custom *secundum legem* is the best interpreter of the law. Although the Code is silent on the point, many authors would likewise require a 40 years' observance before such custom would beget the force of law. Before the 40 years have lapsed, the custom may be considered a safe *directive* norm of action. After 40 years the interpretation of the law contained in the custom becomes *preceptive* and binding. If it has correctly interpreted the mind of the lawgiver, it continues as a custom *juxta legem* ; if it has enlarged the obligation originally intended by the lawgiver, it becomes custom *praeter legem;* if it has restricted that obligation, it has developed into a custom *contra legem.*

Other requisites of a lawful custom as noted by the moralists are: 1) the custom must have been introduced by the people freely and with the intention of creating an obligation; 2) the acts constituting the material for the custom must have been repeated frequently, so that if interrupted to a sufficient degree, the custom ceases altogether. How many interruptions there must be depends upon how often the custom acts are placed, more frequent interruptions being required in the case of acts recurring several times a year, e. g., in Mass rubrics, than in vigil fasts which occur only once a year. In the latter case failure to repeat the custom act only one year will suffice to interrupt the custom.

It should be noted that it is extremely difficult to determine in any given case whether all the requisites for a lawful custom have been verified. It is for that reason that modern States generally refuse to recognize custom as a source of civil law, preferring the certainties of the written to the uncertainties of the unwritten law. However, the Church is a world-wide organization, and local customs are to be respected, since laws so universal as her's cannot find equal application in every country due to differences of temperament, racial habits, etc.

The moralists tell us that those who begin a custom *contra legem* arc guilty of sin, they being in *mala fide*. But this is not always the way a contrary custom is introduced. Many modern customs in the Church which militate against canon law have had their origin in papal induits. Even if a later law revokes contrary induits, if the conditions which justified the induits continue, there would seem to be a *bona fide* custom established *contra jus*. supposing all the requisites of a custom otherwise are at hand, as listed above.

ART. IV.

Cessation of Customs

Customs are repealed by contrary customs or contrary written laws. (c. 30). But *centenary* and *immemorial* customs are not repealed by a contrary written law unless the new law specifies this. Likewise, a particular custom is not revoked by a contrary *general* law, unless the new law contains an explicit clause to that effect (c. 30).

At this place we are speaking of the repeal of new post-Codc customs. As to customs which existed prior to the promulgation of the Code, their repeal is governed by c. 5 on which we have already commented.

Chapter III

THE COMPUTATION OF TIME.

Rights and duties arise from laws, precepts, rescripts, judicial sentences and other acts of the lawful superior. And just as these acts of the superior begin with time and end with time so do our rights and duties. It is important, then,to know how to reckon time in the legal sense so that we may know at what precise moment our rights and duties begin, and at what precise moment they cease. The reckoning of time, therefore, is treated in Bk. I of the Code in conjunction with the general norms of interpretation.

The rules which follow have no application: 1) in those liturgical matters where liturgy has its own way of computing time, c. g., the beginning of the ecclesiastical year coincides with the first Sunday of Advent; 2) in contracts where the satisfying of obligations is governed by the civil law (c. 31 and 33, §2).

ART. I.

Day, Week, Month and Year Defined
(c. 32)

A *day* consists of 24 consecutive hours, and begins with midnight. A *week* consists of 7 days.

A *civil* month consists of 30 days, a *civil* year of 365 days. A *natural* month, on the other hand, or a calendar month, consists of 28. 29, 30 or 31 days, depending on the month in question ; and a *natural* year consists of 366 days during a leap year.

The rule is that a month and a year must be understood in the civil (juridical) sense as just defined, saving three cases:

1) If month and year are designated either by their proper name, C. g., *during the month of February,* or equivalently, e. g., *next month;*

» 2) If the starting point (termùm *a quo}* is mentioned cither explicitly, c. g., *three weeks' vacation from August* 15, or implicitly, e. g., *ten days for appeal;*

3) If the nature of the subject matter suffers no interruption, e. g., *suspension fur a month.* In all these cases the calendar is followed (cfr. c. 34, §1, 2, 3, n 1).

ART. II.

Computing the Hours of the Day
(c. 33, §1.)

In computing the hours of the day one must adopt the time sanctioned by the common usage of the place, saving the exceptions of the next paragraph. The reason is that in public matters order must be preserved and confusion avoided, and a uniform system of computing time is essential to that end.

For the contrary reason, i. e., because there is question of matters which do not affect the public order, greater latitude is allowed the individual in four cases: 1) in the private celebration of Mass, and by this we can understand any Mass which need not be said in virtue of a public obligation, as is the parochial Mass, the conventual Mass of Canons and regulars, etc.; 2) in the private recitation of the canonical hours, i. e., the recitation not conducted in choir made obligatory by law as in the case of Canons and regulars; 3) in the reception of holy communion; 4) in the observance of fast and abstinence. In the above cases the privilege is granted of following either; 1) the time ordinarily observed in the place; or 2) local true time; or 3) local mean time; or 4) standard time; or 5) any extraordinary legal time.

Local true time, called also sun time, is measured by the sun, a true solar day consisting of the interval of time between two successive transits of the sun over the observer's meridian. Due to the variation in speed with which the earth revolves upon its axis at different seasons of the year, the solar day correspondingly varies in length from day to day. Solar time is indicated by a sun dial.

Local mean time was introduced after clocks were invented to serve as a constant unvarying system of time measurement, and thus to obviate the daily variations inherent in the solar time system. A mean solar day is the interval between two successive transits of a fictitious sun over the observer's meridian, i. e., of a sun which is conceived as crossing the observer's meridian at the same precise moment each day. It consists of 24 hours without variation, this being the average of all the solar days of the year.

Standard time, called *legal regional* time by the Code, is that which is computed from a given (standard, prime) meridian and by the Federal law (with us) made obligatory for all places within a given zone. 'I'he zone covers 15 longitudinal degrees as a rule, so that all places within seven and a half degrees east and west of the standard meridian follow the time of that meridian. In the United States we have five zones, or standard times: 1) colonial time which is measured by the 60th degree west of Greenwich, England; 2) eastern time which is measured by the 75th degree; (3-4-5) central, mountain and Pacific time which are measured respectively by the 90th, 105th and 120th meridian.

Standard time became a necessity with the advent of the railroads, and it was mainly at their insistence that the time was adopted in this country. For under the mean local time system every village and town followed its own local time, and every railroad company had its timetables drawn up without consideration for those of other companies. As a result collisions often occurred, not to mention that people were constantly missing their train. It should be noted that rhe Interstate Commerce Commission has jurisdiction in drawing the boundaries of the different zones. These boundaries arc constantly varying according to the demands of commerce, and arc not always confined to 15 degrees of longitude.

Sometimes it is an advantage to follow standard time, at other times local time is more advantageous. In this connection it should be remembered that all places within a given zone lying cast of the standard meridian find their local time in advance of standard time; whereas all places lying west of the meridian find that the standard time is in advance of the local time. The difference between standard and local mean time in any place is ascertained by computing the difference between one's own meridian and the standard meridian, a difference of one degree corresponding to a difference of four minutes.

Legal extraordinary time is that which the civil law authorizes for some transient cause. Thus, in war time the day is advanced one hour during the summer seasons in order to utilize natural, or day light, and thus to spare artificial light.

'I'he question arises whether the Code permits one to follow two or more different time systems in order to satisfy two or more concurrent obligations. AU authors are agreed that this would be forbidden if the concurrence of obligations is of an *intrinsic* nature, c. g., on a day of fast and abstinence, it would not be permitted to follow one time in respect to fast and another in respect to

abstinence. If, however, there is question of merely an *extrinsic* concurrence of obligations, the matter is controverted between two equally divided schools of canonists. Let it be noted that the concurrence of obligations is intrinsic or extrinsic according to whether the obligations can be fulfilled independently of each other or not. Even in the case of extrinsic concurrence many authors deny one the privilege of adopting two or more different time systems if the extrinsic concurrence arises from the fact that the different obligations arc satisfied by the same act or omission. They in: tance the case of one who on midnight between Friday and Saturday observes Friday abstinence according to one time and the Saturday Eucharistic fast according to another time. They argue that because of the affinity of subject matter here, it is reasonable to suppose that the lawgiver wishes the two precepts to be joined. The second group of writers favors liberty in the case described: 1) because no real absurdity is involved in adopting two different times, since it may be Saturday as far as Friday abstinence is concerned, and Friday as far as the Saturday Eucharistic fast is concerned; 2) because the lawgiver has made no exception of this case in c. 33, so that the principle may be invoked: *legislator quod voluit expressit, quod noluit tacuit*; 3) because c. 33 contains a privilege, and privileges ought to to be construed broadly: *favores ampliandi sunt.*

ART. III.

Computing the Beginning and End of Several Weeks, Months and Years

(c. 34, §3)

A day always begins with midnight when taken by itself. When viewed as forming a fraction of a longer period of time, a day may or may not begin with midnight, depending on whether the time in question is to be reckoned naturally or civilly. A time period is said to be computed naturally *(de momento ad momentum)* when it begins with a certain moment of the day and ends precisely at the same moment of another day. It is computed civilly when it begins with midnight and ends with midnight so that the fractional day preceding the first midnight is not counted.

Natural computation obtains whenever the starting point has not been designated, e. g., *suspension for a month, three months' vacation,* etc. Here we suppose a *latae sententiae* suspension not

pronounced by the superior but by the law alone. Likewise we suppose a vacation which a cleric is at liberty to begin at any time of his choice.

Civil computation, on the other hand, applies whenever the starting point has been designated by the law or by the superior. Here:

1) If the starting point does not coincide with midnight, the fractional part of the first day is not computed, and the time expires with the *end* of the day of the same number, unless the month lacks a day of the same number, in which case the time expires with the last day of the month, e. g., *the* 14/Λ *year of age, the year of novitiate, eight days from the vacancy of the episcopal see, ten days allowed for appeal,* etc. Thus, e.g., if the novitiate began with investment with the habit at 10 a. m. on August 2, 1946, it will expire at midnight between Aug. 2 and 3, 1947. The examples here given are cited by the Code as illustrative of periods not beginning at midnight. In some exceptional case it is possible for one to be born precisely at midnight, for a bishop to die precisely at that moment, etc., and in that supposition the rules contained under n. 2 obtain, namely :

2) If the starting point coincides with midnight, the time expires at the *beginning* of the day of the same number. Thus, if the bishop grants Titius *two months' vacation from Aug. 1$,* we may presume from this mode of expression that the vacation is to begin at midnight between Aug. 14 and 15. In that case it will end at midnight between Oct. 14th and 15th.

3) When acts of the same nature are repeated at stated intervals, and even though the starting point does not coincide with midnight, the new act may be placed at any time of the day of the same number as the fractional day on which the time period began. Thus, e.g., a religious who made his first profession at 10 a. m. on Aug. 3, 1947, may, after three years, if he is of age, pronounce perpetual vows at any time on Aug. 3, 1950. But the beginning of the novitiate and first profession arc not to be so computed, since novitiate and profession arc not acts of the same nature, (cfr. Code Comm. Nov'. 12, 1922; *Acta* XIV, 661).·

ART. IV.

Tempus Utile and Tempus Continuum

Tempus utile is that which does not transpire for one who is ignorant of his rights, or is unable to exercise or prosecute his rights ;

tempus continuum is that which suffers no interruption for any cause (c. 35).

In a case of doubt time must be presumed continuous; if *tempus utile* is intended, the law must expressly state that such is the case. The reason is that it is more in the nature of time that it should run on without interruption. The Code contains many canons which explicitly provide that *tempus utile* is intended, e. g., c. 161 ; c. 1884.

ART. V.

Physical and Moral Computation of Time

'l'ime is computed physically when it is reckoned to the second ; otherwise it is computed morally.

All time must be computed physically, and the principle; *parvum pro nihilo reputandum* docs not apply. The reason is that when the law or the superior has determined a matter so accurately as in the case of time, he has thereby excluded all possibility of latitude on the part of the subject.

Therefore, when the clock strikes midnight, one day has ended and another has begun. Should two or more clocks indicate different times, a person is at liberty to choose between them, provided they ordinarily keep good time, for in that supposition it is reasonable to presume that the chosen clock indicates the correct time at the present moment likewise.

Chapter IV

FAVORS

Having ascertained the law and its correct meaning, one must further inquire whether the law has possibly been modified in some particular case either by reason of contrary custom, a permanent exemption, a transient excuse, or, as most frequently happens by reason of a privilege or dispensation. And since all purely ecclesiastical laws can suffer modification in virtue of a privilege or dispensation, it remains to discuss these two forms of favors in Bk. I among the general norms of interpretation. We have already considered exempting and excusing causes on p. 93.

It should be observed at this place that canon law must suffer more exceptions in its application and enforcement by reason of privileges and dispensations than civil law. Civil legislation is legislation for citizens of only one country, and there is little difficulty in framing or enforcing such legislation due to the fact that the social needs, habits, traditions, temperament, etc. of the citizens are comparatively uniform throughout the nation and have been taken into consideration by the lawgiver. It is otherwise with a body of laws which, like the common law of the Church, is designed for the members of the Church throughout the world. Such a world-wide legal system cannot be enforced with uniform rigor in every country, but must be continually modified for particular places and persons. These modifications of the law most frequently take the form of privileges and dispensations. Thus, in the United States with its preponderantly non-Catholic population it is more difficult to enforce the prohibition against mixed marriages than in a Catholic country like Italy, since it is more difficult for a Catholic with us to find a suitable mate of his own faith for marriage. Hence, while a dispensation from the law prohibiting mixed marriages is rarely granted, e.g., in Italy, with us such dispensations are of daily occurrence.

We shall divide our chapter into two articles: in article I we shall discuss favors in general, i.c., rescripts, and in article II favors in particular, i.e,, privileges and dispensations.

ART I.

Favors in General

(Rescripts)

It is customary in canon law to explain the general principles which govern favors under the heading of rescripts. The reason is that privileges and dispensations are granted in writing as a general rule by the ecclesiastical superior. In the present article, therefore, we shall use the words *favors* and *rescripts* interchangeably.

§1. Nature of Rescripts

A rescript (from *re-scribere,* to write back) is a written favor granted by the Holy See or the Ordinary in response to a request.

Rescripts differ from privileges, dispensations and other favors (e.g., permissions) in that the rescript is the container, while the favor is the thing contained. There is here but a difference of form: rescripts are the documents conveying the favors. Hence, whatever affects the validity of the document affects the validity of its contents.

§2. Rescripts Classified

Rescripts are divided into: 1) rescripts of *justice* which refer to trials and extrajudicial settlements of litigations, and rescripts of *favor* which refer to all other matters; 2) rescripts *in forma gratiosa* which are granted directly to the petitioner, and rescripts *in forma commissoria* which the superior grants to the petitioner only through the agency of an intermediate party called the executor; 3) rescripts granted *ad instantiam* or *ad preces,* and rescripts granted *motu proprio*: the latter being those rescripts which contain the clause *motu proprio,* the former being all rescripts which do not carry that clause: 4) rescripts *contra jus* which involve favors inconsistent with the observance of the law, e.g., dispensations, and rescripts *praeter jus* which grant favors consistent with the observance of the law. e.g., many privileges and all permissions.

§3. Beneficiaries of Rescripts
(c. 36-37)

Favors can be granted to all who arc not debarred from enjoying them. The following are excluded:

1) Those who have been excommunicated, suspended or interdicted *by an ecclesiastical court sentence.* These are incapable of receiving *any* kind of favor as long as they remain under censure.

2) Those who are considered incapacitated with respect to *certain* favors cannot validly receive those favors, e.g., a deacon cannot receive title to a parish. But in such cases, if the rescript contains a clause derogatory of the petitioner's incapacity, the rescript will be valid.

Rescripts can be petitioned for others without their knowledge and assent. This principle finds practical application where a marriage must be validated by a *sanatio in radice* due to the fact that one or both parties cannot be informed of the invalidity of their marriage without serious consequences.

§4. When Rescripts Take Effect (c. 38; 41)

Rescripts granted *in forma gratiosa* take effect the moment they are dated. Hence, the reason alleged in the petition must be verified at that time, and if it is verified only later, the rescript is invalid.

Rescripts granted *in forma commissoria* take effect only from the time of their execution, and so it suffices that the reason offered in the petition be verified at that moment.

§5. Conditions in Rescripts (c. 39-40; 42-44)

Express conditions—Conditions which are expressed in a rescript by the particles: *si, dummodo,* or equivalent words, are essential to the validity of the rescript so that their non-fulfillment, or non-verification, will invalidate the favor.

The *ablative absolute* must be considered equivalent to an essential condition if the nature of the subject matter so postulates, e.g., *praemissa accusatione sacramentali* when found in faculties to absolve from reserved sins; otherwise the ablative absolute expresses only a condition for the *licit* enjoyment of the favor, e.g., *imposita salutari poenitentia.*

Implied conditions—In every rescript two conditions are implied :

1) That at least one of the motive reasons alleged be true in case several reasons are offered. Hence, if all the reasons offered in

the petition were false, this invalidates the favor. But if in addition to one or more true reasons other reasons of a false nature were cited *(obreptio)*, this will not affect the validity of the favor.

2) That nothing is concealed in the petition which the common law, or the practise of the Roman Curia demands should be stated for validity. Provided this requirement is satisfied, then the concealment of other matters is non-essential, i.e, *subreptio* in such matters will not affect the validity of the favor.

Common lew requires for validity mention of the following facts in *every* petition, provided the facts are such: 1) that the favor has ahead}· been denied by one Congregation or Office of the Curia; 2) that the favor which is asked of the bishop has already been refused by the vicar-general; 3) that the petitioner is disqualified for the favor, or that it militates against local custom, or particular Statutes, or the acquired rights of third parties.

Other facts must be mentioned in petitions for certain kinds of favors, and these can he learned only by a perusal of the Code, e.g., when a religious community asks for an Apostolic induit to contract a debt in excess of 30,000 lires ($6,000), the petition must state if there arc any outstanding debts, otherwise the permission subsequently granted is invalid.

The *style of the Roman Curia* varies so much from time to time, and with the different departments of the Curia, that one docs not always know just what information this or that Congregation desires in some particular case. Hence, it is advisable that each bishop do business with the Holy See through some accredited agent at Rome.

§6. *Motu Proprio* Rescripts (c. 45-46)

A *motu proprio* rescript is one which carries that clause. It means that notwithstanding the fact that a petition preceded, the Roman Pontiff desires that the favor be regarded as one granted on his own initiative, and, therefore, bestowed with more than ordinary liberality. That liberality finds expression in the following rule: a concealment in the petition of some otherwise essential fact *{subreptio)* does not invalidate *motu proprio* rescripts provided the *subreptio* does not extend to concealing these facts: 1) that the petitioner is incapacitated for the favor; 2) that the favor militates against local custom, particular statutes, or the acquired rights of third parties. But *obreptio* invalidates *motu proprio* rescripts to the

saine extent as it docs every other kind of rescript. Hence, if the only reason offered in the petition was false, this invalidates even a *motu proprio* rescript.

§7. Error in Rescripts
(c. 47)

An error in the name of the petitioner or the grantor does not invalidate favors granted by the Holy See.

Neither does an error concerning the petitioner's domicile, or the object of the favor, render the favor invalid.

In all these cases it suffices that there exists no doubt in the mind of the Ordinary as to the identity *of* the beneficiary, or the nature of the favor.

§8. Conflict of Rescripts
(c. 48)

When two or more rescripts conflict the following rules govern:

1) The particular favor prevails over the general one on those points where it particularizes;

2) If both favors are equally particular, or equally, general, the rescript issued first prevails;

3) If both favors were granted on the same day, the rescript of the first *petitioner* prevails;

4) If it cannot be ascertained who was the first petitioner, both rescripts are invalid, and the petition must be renewed if the favor is still desired.

Such conflicts as here contemplated rarely occur today due to the modern efficient organization of the Roman Curia which now prevents an overlapping of jurisdiction among two or more Congregations or Offices.

§9. Interpretation of Rescripts
(c. 49-50)

Rescripts must be interpreted in the light of their wording, understanding the words in their usual and most known signification, first the canonical and then the popular meaning if the word has no technical meaning.

In the event that both a broad and strict interpretation is possible, the broad interpretation must be preferred. To this rule there are three exceptions. The strict interpretation must be employed: 1) If the rescript is one of justice or refers to litigated matters. Hence

a cleric who is delegated to try a case between A and B, cannot assume jurisdiction also in a case between C and D. For the rest, rescripts of justice are not so frequent today as in past centuries. In the Middle Ages one could easily obtain from Rome the privilege of being judged by a cleric other than the local Ordinary. This led to innumerable abuses. At the present day the Holy Sec, however, sometimes delegates the local Ordinary to try cases reserved to itself; e.g., *ratum et non-consummatum* marriage cases. Such a written delegation amounts to a rescript of justice; 2) If the rescript runs counter to the general law in favor of *private individuals,* e.g., all dispensations. But a privilege *contra jus* granted to a *community* need not be strictly interpreted, e.g., the privilege of exemption accorded to regulars; 3) If the rescript refers to ecclesiastical benefices, for petitions of this nature savor of worldly ambition. And so, a rescript conferring a canonry does not include a dignity in the cathedral chapter.

§10. Execution of Rescripts (c. 51-59)

Seldom does the Holy See grant rescripts to private individuals *in forma gratiosa,* i. e., directly without the intervention of an intermediate executor. If this should happen, however, the rescript must still be presented to the Ordinary: 1) if the rescript so states; 2) if the favor concerns the public order, e.g., the faculty of erecting the Way of the Cross; 3) if certain conditions must be verified, e.g., the privilege of a private oratory requires that the place where Mass is to be said be decent and becoming, the judgment of which is left to the Ordinary. In these cases since the Ordinary is not an executor, he merely affixes his *visum*.

The presentation may be deferred as long as it pleases the beneficiary, provided no fraud or malice is involved in such delay. There would be fraud, e.g., where the presentation of the rescript is delayed in order to permit the petitioner to become capacitated for the favor in course of time.

As a rule petitions will not be honored by the Holy See unless they carry the Ordinary's endorsement. But petitions may be sent directly to the S. Penitentiary by any Catholic; and the rescript will be sent directly to the petitioner with the proviso that he choose any approved confessor in the diocese to execute the same, e.g., to grant absolution from a reserved censure. In practice, however, the confessor usually requests the favor of the S. Penitentiary in the penitent's name, and adds his (the confessor's) address. This is true

where the local Ordinary has no delegated faculties, or where he cannot be approached without danger of violating the seal of confession.

Concerning rescripts intended for the external forum, these are sent to the petitioner's Ordinary, whom also the Holy See appoints the executor of the rescript. In this case:

The rescript may be granted in *forma commissoria necessaria* or in *forma commissoria libera.* Whether the rescript has been granted in the one or the other form can be learned only from its wording.

If it is granted in *forma commissoria libera,* the Holy See leaves it to the executor to cither grant or withhold the favor according to his conscience and prudent judgment.

If it is granted in *forma commissoria necessaria,* the executor's function is purely a ministerial one: he has no choice in the matter, and is obliged to execute the rescript. However, even here he may and must deny the favor: 1) if it is known that the petition suffered from a manifest *subreptio* or *obreptio;* 2) if conditions contained in the rescript arc not verified; 3) if in the judgment of the executor the petitioner is so unworthy of the favor that its grant would prove offensive to others. In the last supposition the executor should withhold the favor, notifying the Holy Sec as soon as possible of his action. In practise the above suppositions will rarely occur since, as we have said, petitions addressed to the Holy See must first be endorsed by the Ordinary, generally speaking.

Rules of procedure—Whether one has been appointed a voluntary or a necessary executor of a favor, he must always observe the following rules:

1) The executor discharges his office invalidly before he has come into possession of the rescript, and has ascertained its authenticity and integrity, unless he has been informed beforehand of the grant by authority *of* the grantor, e.g.. by cablegram.

2) The executor acts invalidly if he exceeds the limits of his authority. This happens: 1) when he grants more than the rescript calls for; 2) when he grants the favor to more beneficiaries than are designated in the rescript; 3) if he neglects the essential conditions specified in the rescript, e.g., in marriage dispensations from mixed religion the parties must sign the promises; 4) if he disregards the substantial mode of procedure, e.g., if he has been delegated a judge he must observe the formalities of a trial as in Part 1 of Bk. IV.

3) Rescripts intended for the external forum should be executed in writing, this being required for licitness, not validity. The reason is to furnish the beneficiary with proof of the favor should proof be required of him later on. Rescripts affecting the sacra-

mental forum are executed by the confessor orally, the rescript being destroyed as soon as possible.

4) The executor can delegate another person to discharge his office. Three cases arc excepted: 1) if substitution was forbidden; 2) if the grantor had appointed a substitute; 3) if the executor was chosen for personal qualifications. In these excepted cases, however, the executor is not forbidden to leave to another the so-called preparatory acts, e.g., a delegated judge could appoint an auditor to preside at most sessions of the trial, reserving to himself the rendering of the sentence.

5) Rescripts may be executed by the original executor's successor in office or dignity, unless the executor had been chosen for personal characteristics.

6) If in executing the rescript, the executor should have erred, he may execute it anew.

7) The amount chargeable for the execution of rescripts is to be determined by the provincial council, or a convention of the bishops of the province, unless the Holy See specifics the charges in the rescript itself, as is not unusual, e.g., in the quinqennial faculties.

§11. Cessation of Rescripts
(c. 60-62)

Favors cease:

1) By *revocation* on the part of the grantor. But the revocation does not become effective until the beneficiary has been informed of the revocation.

2) By *contrary law;* but in this case the law must contain a clause expressly derogatory of the favor, unless the law is that of the grantor's superior. In other cases favors do not cease by a contrary law.

3) By *vacancy in the see* of the grantor, but only in two cases: 1) if it is so provided in the rescript, e.g., by the clause: *ad beneplacitum nostrum;* 2) if the rescript was granted in *forma commissoria voluntaria* in favor of certain specified beneficiaries and the executor has as yet taken no steps to discharge his office, e.g., if a specified marriage dispensation was obtained from the Holy See in favor of Titius, and before the bishop signs the document of execution, the Holy See becomes vacant; (not if the bishop granted a dispensation in virtue of his quinquennial faculties and before Titius is married the Holy See becomes vacant).

4) In the *same way as privileges,* if the rescript contains a privilege (cfr. p. 121-122).

5) In the *same way as dispensations if* the rescript contains a dispensation (cfr. p. 121-122).

ART IL

Favors in Particular

(Privileges and dispensations)

We shall consider only those points wherein privileges and dispensations differ. For the most part these two kinds of favors have little to differentiate them, their points of similarity far exceeding their points of dissimilarity. On those points where they agree, namely insofar as they are both favors, they are governed by the law on rescripts. Hence, when some point concerning the correct interpretation of privileges and dispensations arises the reader will find himself more often than not consulting the preceding article of this chapter.

§1. Nature of Privileges and Dispensations

A privilege is a *permanent* favor either consistent with the observance of the law *(praeter jus)* or inconsistent with it *(contra jus).* A dispensation is a *transient* favor always inconsistent with the observance of the law *(contra jus).*

A privilege and dispensation, therefore, differ from each other in two respects: 1) a privilege may be *praeter jus,* a dispensation is always *contra jus; 2)* a privilege is a *permanent* favor, a dispensation is a *transitory* one.

To be permanent a privilege need not be perpetual or of indefinite duration. A favor granted for two, five, ten years, etc., may be considered permanent in the sense that its duration is not made to depend upon the permanency of the cause for which it was granted. On the other hand, a dispensation is always granted for a transient cause, and when this cause no longer holds the dispensation also ceases. Thus, the faculty to permit meat on days of abstinence granted for five years is a privilege; permission to cat meat during this illness, this epidemic, this war, etc., is a dispensation. Hence ,the Code defines a dispensation as: *a relaxation of the law in a particular case,* understanding by the phrase *particular case* a transient cause.

§2. Modes of Acquisition (c. 63-65)

Privileges are acquired: 1) by direct grant; 2) by communication; 3) by custom; 4) by prescription. Dispensations, on the other hand, are acquired only by direct grant, as is evident from their very nature.

Privileges arc said to be granted and acquired by *communication* when the legislator provides through a general ruling that whatever privileges he grants to one class must be understood as given to another class. Communication of privileges is frequent between an archconfraternity and its associated confraternities; also between regulars of a first Order and members of the second and third Orders. But the capacity of the subject must be considered. Thus, nuns may enjoy the Missal and Breviary of the first Order, but they are excluded, of course, from the exercise of faculties to absolve from reserved cases which the priests of the first Order may happen to possess.

Privileges arc communicated either *in forma accessoria,* or *in forma aeque principali.* Which mode of communication is intended in any given case can be ascertained only from the wording of the grant. When communicated *in forma accessoria* privileges are enlarged, restricted, or lost for the second grantee by the very fact that they are enlarged, restricted or lost for the original grantee. This ruling, on the other hand, docs not apply to privileges communicated *in forma aeque principali.*

§3. Author of Privileges and Dispensations (c. 80-83)

Privileges and dispensations may be granted: 1) by the lawgiver; 2) by his successor; 3) by his superior; 4) by his delegate.

As to privileges, it is not the practise to delegate others to grant such favors. Powers arc delegated in order to meet cases of urgent necessity as a rule. But there can be no urgent reason for granting a *permanent* favor. It is otherwise with transient favors, i. c., dispensations.

From the *common laic* the following may dispense:

1) The Roman Pontiff, as is evident, he being the lawgiver. Equal powers with the Roman Pontiff have the Roman Congregations so far as they have been authorized to represent him in the matter.

2) Bishops and other local Ordinaries. These may dispense:

(a) in a doubt of fact (c. 15); (b) in ail urgent cases where recourse to the Holy See is difficult and there is danger in delay, and there is question of a law from which the R. Pontiff is wont to dispense (c. 81); (c) outside of urgent cases whenever they are expressly empowered by the Code to dispense, e.g., in virtue of c. 1028 from marriage banns, and in all cases where they have delegated power, e.g., by reason of their quinquennial faculties.

3) Pastors can dispense from the observance of holydays (c. 1245), from fast and abstinence (c. 1245), and from certain marriage impediments within the limits of c. 1044, 1045. These powers they have by the Code. Whether a pastor enjoys other dispensing faculties in virtue of delegation by the Holy Sec or the local Ordinary is a question of fact, not a question of law.

4) Confessors as such can dispense from occult irregularities (c. 990), from certain marriage impediments (c. 1044, 1045), and from vindictive *latae sententiae* penalties in urgent cases (c. 2290). They may have more extensive faculties to dispense by virtue of delegation on the part of the S. Penitentiary or the local Ordinary. Outside of these suppositions a confessor as such can at the most *declare* the penitent excused from the observance of the law by reason of physical or moral inability, e.g., from fast.

5) In clerical exempt religions *major superiors* have the same dispensing powers as *Ordinaries* with respect to their own subjects. *Local superiors* have the dispensing power enjoyed by *pastors* with respect to their religious subjects. In non-cxempt religions superiors, since they have no jurisdiction, cannot grant dispensations save in virtue of delegated faculties, but they can *declare* exemptions.

From the laws of *plenary* and *provincial councils* local Ordinaries may dispense in individual cases for a just cause.

|4. Causes Required for Privileges and Dispensations (c. 84)

The Code is silent concerning the nature of the reasons required to justify a privilege. This is logical because privileges, as we said, are seldom if ever granted by delegated authority. When approached for a privilege the lawgiver himself will pass judgment on the reasons offered in the petition. Hence, we will confine ourselves to dispensations.

Ever)· lawgiver validly dispenses in his own law even without a just cause, but not licitly unless a just reason be present. Otherwise he would sin by partiality.

Those inferior to the legislator must have a just cause for dispensing, otherwise the dispensation is both *invalid* and *illicit.* This ruling should be borne in mind especially by pastors and others with the care of souls when applying to the bishop for matrimonial dispensations. They should make sure to state a reason in the petition. The bishop in this case needs a just cause, for he is dispensing in the law of the superior, whether by ordinary or delegated power is immaterial.

A *just* and *reasonable* cause is required. The cause is just and reasonable when due proportion is observed between the gravity of the law from which a dispensation is sought and the amount of hardship which the observance of the law would otherwise entail. Hence, a light reason suffices to dispense from a law which binds *sub levi,* a grave reason being required in the case of laws binding *sub gravi.*

The Holy See has listed a number of reasons which may be considered canonical and, therefore, just and reasonable, to dispense from *marriage impediments.* In other cases the practise of the Roman Curia may shed some light on this subject. For the most part it will be left to the judgment of him who dispenses to decide whether the reason alleged in the petition is just and reasonable. And lest scruples arise from this somewhat vague ruling, the Code states that in doubt concerning the sufficiency of a just cause, a dispensation may be both validly and licitly requested and granted.

§5. Interpretation of Privileges and Dispensations (c. 67-70; c. 85)

There is but one rule governing the interpretation of dispensations and it is this: dispensations must always he given a strict interpretation (c. 85). They are a wound on the law.

As to privileges, their construction follows the rules given above for rescripts in general, i.e., they should be interpreted broadly: *favores ampliandi.* Excepted are: privileges *contra jus,* those which refer to trials, and those which refer to benefices.

In addition to the foregoing rules which are applicable to all favors, the following apply to privileges in particular:

1) No one is bound to make use of a privilege granted him for purely personal advantages, e. g., the privilege of a private oratory. It is otherwise if the privilege was conferred in behalf of others, c. g., faculties to absolve from reserved cases. But privileges granted to a class cannot be renounced by the individual, e. g.. the privilege of the forum, privilege of precedence, etc.

2) Unless the contrary is evident, a privilege is to be considered perpetual. This simply means that the privilege docs not cease by cessation of the motive alleged by the petitioner. For the rest, there arc various ways in which privileges, though perpetual, can cease, as we shall learn directly.

3) Habitual faculties are to be considered privileges *praeter jus,* and therefore, admit of broad interpretation. If given to bishops and other Ordinaries, they pass to their successors in office. And such faculties granted to the bishop belong automatically to the vicar-general also (c. 66).

§6. Cessation of Privileges and Dispensations (c. 70-78; c. 86)

1) By *contrary law* privileges contained in the Code cease. Other privileges, c. g., those obtained by direct grant, are not lost by a new contrary law unless the law expressly so provides.

2) By *renunciation* privileges cease after the renunciation has been accepted by the competent superior, e. g., a title or dignity.

3) By *vacancy* in the office of the grantor only those privileges cease which were granted with the clause: *ad beneplacitum nostrum,* or its equivalent.

4) *Personal* privileges do not cease with departure from the territory of the grantor, e. g., the privilege of reading books on the Index.

5) *Real* privileges, e.g., an indulgence attached to a rosary, an altar, etc., cease with total destruction of the object.

6) *Local* privileges, e. g., the title of basilica enjoyed by some church, cease with total destruction of the place, unless the place is rebuilt within 50 years.

7) By *revocation* in the same way as favors in general, especially where the privilege is abused.

8) By *non-use* if the privilege is onerous to others, and the beneficiary has failed to use the privilege for the length of time sufficient for prescription.

9) By *lapse of time,* e. g., in the case of quinquennial faculties.

Dispensations cease in the same way as privileges, and insofar as they are capable of ceasing in those ways. In addition, dispensations cease with the cessation of the motive cause for which they were granted. This applies to dispensations which admit of recurrent application *(quae tractum habent successivum),* e.g., dispensations from fast, from the canonical hours, etc. But dispensations which take full effect with one application, e.g., dispensations from ir-

regularities, marriage impediments, etc., do not cease with the cessation of the motive offered in the petition. And so, a marriage dispensation granted in order to legitimitize offspring which has been born, will not cease to be valid should the infant die before the parents are married.

ON EPIKEIA.

By epikeia is meant a Ixtiigu interpretation of the mind of the lawgiver to the effect that he does not intend the law to bind under the present difficult circumstances, e. g., to abandon a person who is seriously ill in order to attend Sunday Mass.

Although both epikeia and dispensation differ in this respect that the first interprets while the second suspends the law, th:y agree, on the other hand, in this that both rest upon the principle of natural equity. For equity has been defined to mean: *the correction of that wherein the law by reason of its universality is found deficient.*

In the use of epikeia three rules will be found helpful:

1) Epikeia is restricted in its effects to the interna) forum, namely, to render licit what would otherwise be sinful; but its effects cannot reach the external forum, e. g., to remove a diriment marriage impediment.

2) Epikeia cannot be invoked if the superior with dispensing faculties can lk approached without grave inconvenience. The reason is that epikeia is an extraordinary, while a dispensation is an ordinary' method of seeking relief. But it is unlawful to have recourse to extraordinary means when ordinary means are at hand.

J) Epikeia can neither be invoked if a *declaration* of exemption can be had from the confessor. The reason is that human nature inclines us too readily to see exemptions where none in reality exist.

The licitness of epikeia as far as church law is concerned is based on c. 2205 of the Code.

M

ON PERSONS

Bk. II is entitled *De Personis.* It is concerned with defining the rights, powers and duties of those who hold membership in the Church. From this viewpoint all persons in the Church arc conveniently divided into three classes: clerics, religious and laymen, The laity have those rights and duties which result to them from baptism, and these are common likewise to religious and clerics. Religious as such have by reason of their vows certain duties distinct from those of the laity and the clergy, as also certain privileges which neither laymen nor clerics enjoy. Clerics as such have certain powers and rights accruing to them from ordination and ecclesiastical offices, and likewise corresponding duties which are not found to belong to either religious or laymen.

Hence, the Code divides Bk. II into three parts: Part I, On Clerics; Part II On Religious; Part III, On the Laity.

But certain very general legal principles apply to all classes of persons in the Church, and these we shall review in the following preliminary chapter before passing on to discuss persons in particular.

Preliminary Chapter

PERSONS IN GENERAL

In three separate articles we shall consider: 1) the general principles applicable only to physical ecclesiastical persons; 2) the general principles applicable only to moral ecclesiastical persons; 3) the general principles common both to physical and moral ecclesiastical persons.

ART. I.

General Principles Applicable to Physical Ecclesiastical Persons

§1. Physical Ecclesiastical Person Defined (c. 87)

In the *philosophical* sense a person is an individual endowed with reason and free will. In the legal sense by a person we mean a subject of rights and duties. The two terms coincide of necessity when there is question of natural rights and duties, for by birth every natural person is also a legal person so far as the rights, and duties resulting from the law of nature are concerned. But a natural person is not necessarily a legal person in either civil or ecclesiastical law. More than birth is required to enjoy civil rights, namely, residence in the country; and if there is question *of* political rights, c. g., the right to vote, to hold public offices, one must usually be a citizen of the country.

Likewise in canon law, not every natural person is a legal person, or the subject of rights and duties in the Church. One becomes a member of the Church (a legal person) only through baptism. This is by the will of Christ. Baptism was intended as the sacrament of supernatural birth. One must first be supernaturally born before he can live and be nourished supernaturally through supernatural means (grace through the sacraments and prayer) which Christ placed at the disposal of His Church.

But membership in the Church can be of a restricted nature. That is to say, a person because baptised can be a member as far as duties are concerned, but may be deprived of rights and privileges accruing from membership, e. g., the right to the sacraments, to church burial, etc. This happens with all excommunicates.

§2. Age
(c. 88-89)

All persons are either majors or minors. A major is a person who has completed his twenty-first year of age; all under this age are minors.

Major persons enjoy the full exercise of all rights which church members possess. But minors in the exercise of ecclesiastical rights are subject to the authority of their parents or guardians, e. g., they cannot acquire a domicile of their own, but follow that of their parents or guardians.

The law restricting the free exercise of their rights by minors is designed to safeguard them because of their immature judgment, especially in the matter of property· rights. But in some matters minors are free of parental control. Thus, they are at liberty to choose their own state of life. They may, without parental consent, marry, or take religious vows, or receive sacred ordination, and all these acts will be valid, but parental consent is usually necessary for licitness. Likewise, the same minors could, without parental approval, attack by court action the validity of their marriage, religious vows, or sacred orders. In questions that concern property-rights, it may be noted, that church law generally refers us to the civil law on contracts, so that minors will be governed mostly by the civil law on this point.

Minors arc either *puberes* or *impuberes,* i. e., they have, or have not, attained the age of manhood or womanhood. In the case of girls the age of puberty is the completed twelfth year; for boys it is the completed fourteenth year of age. Under these respective ages children arc considered *impuberes.*

The distinction carries juridical effects in four cases: 1) *impuberes* cannot vote in ecclesiastical elections; 2) they' cannot choose their own church or grave for burial ; 3) they cannot testify in court; 4) they are free from *latae sententiae* penalties.

All persons arc either *infants* or *adults.* Anyone who has not completed his seventh year of age is called an infant. In canon law the habitually insane are considered infants, regardless of their real age. Persons over seven years of age arc called adults. The distine-

tion between infants and adults finds frequent application in canon law. Thus, infants are not held to the law of abstinence, to the observance of holydays, to instructions before baptism, etc. Even should a child show signs of intelligence and reason before his completed seventh .year, he must still be regarded an infant. The object of this ruling is to minimize scruples on the part of parents, confessors, and others who may be charged with the child's education, or religious upbringing.

§3. Residence
(c. 90-95)

Where a person is born, called the *domicilium originis,* usually matters little in canon law, except in the case of candidates to the priesthood, or the religious life. For if a man is ordained for the diocese of his origin, he need not take an oath to serve the diocese forever. Before a man is permitted to take religious vows, he will find it necessary to secure testimonial letters from the bishop of the diocese where he was born to certify to his freedom, especially from the bonds of marriage.

It is, on the other hand, often vital to know and determine one's present residence. First, because as long as one is present in the place of his domicile or quasi-domicile he is held to the particular laws of his residence, whereas persons traveling outside of their diocese arc bound, generally speaking, neither to the particular laws of their home diocese, nor to those of the diocese where they are visiting. Secondly, because one's proper pastor and Ordinary is he in whose territory one has a domicile or quasi-domicile. And so, whenever the law speaks of proper pastor, or proper Ordinary one must keep in mind domicile and quasi-domicile. When it is said, e. g., that only the proper pastor can licitly assist at marriage, by this is meant that a pastor can lawfully assist at the marriage only of his subjects, i. e., of those who in his parish have cither a domicile or quasi-domicile. And conversely, since rights and duties arc correlative, persons must be married by their proper pastor for licitness, i. c., by that pastor in whose parish they have either a domicile or quasi-domicile. The same rulings hold in determining the proper pastor for baptism, extreme unction, etc., or for determining the proper Ordinary to issue dispensations, to ordain, to judge cases by way of a trial, etc.

In connection with the question of residence the following terminology occurs:

1) A person is an *incola* in the place of his domicile, (a resident) ;

2) A person is called an *advena* in the place of his quasi-domicile, (quasi-resident) ;

3) A *peregrinus* is a person who for the present is found outside of his domicile and quasi-domicile, supposing he still retains one or the other in the sense that he intends to return home, (a visitor, transient) ;

4) A *vagus* is a person who has nowhere a domicile or quasi-domicile, (a wanderer).

A voluntary domicile is acquired in either one of two ways: 1)by arrival in a place with the intention of remaining there forever, barring unforeseen contingencies; 2) after having actually lived in a place for the space of ten years although the intention of remaining in the place indefinitely had never been entertained. In the first case domicile is acquired on the first day of arrival; in the second case only after the lapse of ten years.

A voluntary quasi-domicile is likewise acquired in either one of two ways: 1) by arrival in a place with the intention of remaining there the greater part of the year (six months) barring unforeseen contingencies; 2) by actually having lived in the place for the greater part of the year. In the first case quasi-domicile is acquired immediately upon arrival ; in the second case only after the lapse of six months.

By *place* in the above two paragraphs must be understood a parish, quasi-parish, diocese, vicariate and prefecture Apostolic. When one has established his residence in a parish, it is called a *parochial* domicile or quasi-domicile. Sometimes a person moves constantly from one parish to another but within the same diocese. In this case he can still have a *diocesan* domicile or quasi-domicile.

A voluntary domicile or quasi-domicile is *lost* by leaving the place with the intention of not returning. And just as the intention of establishing a residence may be ascertained from the statement of the party or witnesses, or from presumptions, e. g., by setting up a business, obtaining steady employment, buying or renting a home, so too, the intention of not returning may be gathered from the statement of the party or witnesses, or from presumptions, e. g., if one sells his business, home, etc., and departs. Purely factual or material departure docs not involve loss of residence. The departure must be formal, i. e., coupled with the intention of not returning. For which reason it is possible for a person to have two or more domiciles at one and the same time, e. g., because he lives so many

months a year at this home, so many months at that home etc. In the same way one may have a domicile and quasi-domicile in different places, c. g., in the case of students. If a person has several domiciles, or a domicile and a quasi-domicile, he may also have several proper pastors and Ordinaries. But their jurisdiction does not conflict, since the principle *datur locus praeventioni* applies, and it is the subject himself as a rule who chooses among the several pastors or Ordinaries and thus determines the *praeventio*.

'I'he following persons have a *legal* or necessary domicile:

1) .Married women retain the domicile of their husbands as long as they have not secured a separation *a toro et mensa* from the proper ecclesiastical authorities.

2) Minor children retain the domicile of their parents or guardians.

3) The insane have no domicile save that of their curators or guardians.

4) Religious have a legal domicile in the place where the house to which they have been assigned *de familia* is situated.

5) *Fagi* are subject to the pastor and the Ordinary in whose parish or diocese they happen to be sojourning. Those who have only a diocesan domicile or quasi-domicile are subject to the pastor in whose parish they are now staying.

But a married woman can acquire a quasi-domicile of her own. If she is lawfully separated from her husband by ecclesiastical authority, she may also acquire a proper domicile. This is important in marriage trials to determine the competent court.

A minor can acquire a quasi-domicile of his own. This is important in determining the proper pastor to assist at his marriage.

Unlike voluntary domiciles, legal domiciles cannot be lost by mere departure from the place with the intention of not returning.

§4. Sex

In canon law women arc debarred from holy orders, ecclesiastical offices, and jurisdiction. Married women, moreover, retain the domiciles of their husbands, as just explained.

In all other respects sex is no factor limiting legal capacity or liability. Thus in purely spiritual matters canon law proclaims the equality of the sexes. Women have as much right to salvation as men, and to the means of salvation, e. g., to the sacraments, to assistance at divine services, to the religious life, etc.

§5. Consanguinity and Affinity
(c. 96-97)

These relationships modify legal capacity only in a few cases: 1) near relatives by blood or marriage cannot contract marriage between themselves (c. 1076. 1077); *2)* superiors may not confer ecclesiastical offices upon their relatives under certain circumstances (c. 157; 3) relatives are debarred from testifying in court except in marriage cases (c. 1757, S. 3, n. 3); 4) exception can be taken to the officers of the court on the ground of their relationship with one of the litigating parties (c. 1613). For further discussion, see . 478.

§6. Rite
(c. 98)

Legal liability is greatly affected by the rite to which one belongs. We have seen under canon 1 that Orientals are not bound by the laws of the Code as a general rule.

The law is that a person belongs to that rite in which he was legitimately baptised. Moreover, a person must be baptised in the rite of his parents. If one parent belongs to the Latin, and the other to the Oriental (Uniate) rite, the child is to be baptised in the rite of the father. If the father is a non-Catholic, the rite of the mother prevails.

Sometimes a person is not baptised in the rite determined by the law just quoted. In that case he belongs, nevertheless, to the rite in which he should have been baptised, and not to the rite in which he was *de facto* baptised. In three cases is this particularly verified: 1) if a person was fraudulently baptised by a minister of a strange rite; 2) if he was baptised by a minister of a strange rite in a case of necessity, or even at the mere wish of the parents (Code Comm. Oct. 16, 1919; *Acta* XI, 478); 3) if by Apostolic dispensation a person was allowed to receive baptism in a strange rite without being enrolled in that rite.

No one may without Apostolic induit change his rite. But a married woman may during the lifetime of her husband transfer to his rite, and she may after his death return to her own rite.

A change of rite cannot be effected through prescription, .g., by the practise of receiving communion in a strange rite, no matter how much prolonged.

ART. II.

General Principles Applicable to Moral Ecclesiastical Persons

There are in the Church besides physical persons also moral persons or corporations. We shall: 1) define a moral person; 2) classify moral persons; 3) explain their method of operating; 4) determine how a moral person is dissolved.

§1. Moral Person Defined

A moral person is a juridical entity, constituted by public authority, subsisting independently of the persons who compose it, and endowed with the capacity of acquiring and exercising rights in the corporate name. The rights in question, in the case of an ecclesiastical moral person, may range from that of acquiring and administering property to that of gaining induits and other privileges, electing and presenting to ecclesiastical offices, exercising deliberative jurisdiction, enjoying precedence, suing in the ecclesiastical court, etc. (c. 99).

To be such, a moral person in the Church must have obtained a charter of incorporation either in virtue of the law, or by decree of the competent ecclesiastical superior. In order that an entity may be acknowledged as a moral person by the law it is not required that the law expressly refer to the corporation as a moral person. Implicit recognition suffices. This is given when the law grants powers and rights and there is no mode by which those rights and powers may be exercised without the institution acting as a moral person. Such implicit charter of incorporation is conferred by the Code upon a diocese, a parish, a cathedral chapter, etc.

Where the law itself docs not confer corporate personality, this must be obtained from the competent ecclesiastical superior. The decree must make it clear that corporate personality is being conferred. If the institution or society is merely commended and praised, it remains but a collective person, or partnership, so far as the Church is concerned, even though it be a corporation under the civil law, e.g., the Knights of Columbus, the St. Vincent de Paul Society, (c. 100, §1).

No charter of incorporation will be issued unless: 1) the society pursues a charitable or religious end, otherwise the State alone is competent to incorporate; 2) at least three persons constitute the

membership, otherwise action by majority vote is impossible (c. 100, §1,2).

It should be noted, that although ecclesiastical moral persons ought to be acknowledged as such also by the State in virtue of the sovereignty of the Church in matters spiritual, yet where this sovereignty is disclaimed as in most modern States, it will be necessary, to protect its temporal interests, that the ecclesiastical corporation secure from the State a civil charter of incorporation likewise.

§2. Division of Moral Persons

By reason of origin moral ecclesiastical persons are either of divine or ecclesiastical law. The Church universal, and the Apostolic See arc moral persons by divine law. The Church universal was founded by Jesus Christ, our Lord, as a sovereign society endowed with all powers necessary to achieve her divine mission independently of the civil authorities, and therefore self-subsisting. The Apostolic See, if by this we understand the papal office exclusive of the Roman Curia, was likewise established directly by Christ Himself, when He conferred the plenitude of power upon St. Peter, the Prince of the Apostles, power which was intended to pass down to his lawful successors in perpetuity. All other moral persons in the Church arc such by reason of ecclesiastical law alone, e. g., this or that diocese, the Roman Curia, religious organizations, parishes, hospitals, etc. (c. 100, §1).

By reason of *internal constitution* we have collegiate and non-collegiate moral persons. A collegiate moral person (corporate body) is composed of physical persons, c. g., a confraternity, a religious Order. A non-collegiate moral person (non-corporate body) is composed of a definite amount of goods or property destined for a religious or charitable purpose, e. g., a school, college, seminary, university, hospital, orphanage, hospice, church, benefice, etc. (c. 99).

§3. Modes of Operation
(c. 101)

The acts of a *non-collegiate* moral person, e. g., a seminary, hospital, etc., are governed principally by its statutes. Where the statutes are silent, the common law should be consulted. As a rule there is a board of trustees with a president, secretary, treasurer, etc., to administer the property. Sometimes there is but one administrator, c. g., the clerical incumbent of a benefice, although for civil effects a board of trustees may have to be set up to administer the goods.

Thus in many States the administration of the temporalities of a parish must be committed to a board consisting *of* the bishop, the vicar-general, the pastor and the two lay trustees of the parish. If this is in accordance with the civil charter of incorporation, it must be observed so long as the temporalities of a parish arc to be protected by the civil courts.

Collegiate moral persons arc sometimes empowered to act through one officer or superior. Thus the bishop, the provincial, the local religious superior, etc., can proceed alone in certain matters defined by common or particular law. At other times the board, or council, consisting of a few select officers, must be convoked. At other times again, but seldom, the entire organization must vote on a resolution.

When a corporate body must act collectively, c. g., the provincial definitorium, the body of diocesan consultors, etc., the following rules must be observed, provided particular statutes do not enlarge the obligation, for in that case the particular law (e. g., the constitutions, of the religion), where this is *praeter jus commune,* prevails, as where, e. g., an absolute majority is required in every ballot for election. Otherwise:

1) In the first two ballots an absolute majority of votes is required. An absolute majority is anything over half the totality of valid votes cast. Which votes arc to be considered valid or invalid wc shall see.

2) If no absolute majority is reached in the first two ballots, a relative majority suffices for a decision in the third ballot. A relative majority is the greatest number of votes given to any one candidate or measure, even though that sum does not exceed half of all the votes cast. Thus, if of ten votes cast in the third ballot, 4 were given to A, 3 to B, and 3 to C, the election would go to A.

3) If in the third ballot a tie results in the sense that an equal relative majority is given to two or more candidates, to two or more measures, then if there is question of voting on measures or resolutions, the presiding officer must break the tie by casting an additional vote. If there is question of elections, and the president does not choose to exercise his prerogative, e. g., to avoid hard feelings, the law itself decides the issue in this way: the senior of those who have received equal votes is considered elected. By seniority here is meant in the case of clerics, seniority in ordination; in the case of religious, seniority in first profession; in the case of laymen seniority in age.

4) When the resolution proposed affects all the voters as

individuals and not merely as members of the corporation, unanimity is required for the adoption of the measure. The classical illustration is that of substituting election with compromise. In practically all other cases it is extremely difficult to determine whether the rights of the voters as individuals arc being affected by the proposed measure or not. The doubt remaining, the general rule concerning rhe sufficiency of a majority vote should prevail.

§4. Dissolution of Moral Persons
(c. 102)

Moral persons are created to secure perpetual succession, i. e., to prevent the dissolution of the society upon the first death of a member, as would be the case in a mere partnership. Therefore, moral persons arc by their nature perpetual.*

Moral persons cannot be dissolved even at the will of all the members. They can be dissolved only by decree of the competent authority which created them, or by his successor in office. Likewise, they are dissolved upon the death of all the members, provided the corporation fails to revive within 100 years.

ART. III.

General Principles Applicable to Both Physical and Moral Persons

§1. Force, Fear, Fraud and Error as Determinants of Legal Acts
(c. 103-104)

Force—Acts done through physical compulsion or force *(vis physica)* of such nature that the force could not he resisted are invalid by their very nature. Physical compulsion always implies bodily restraint or movement in the passive agent caused by the active agent, c. g., imprisonment.

Physical and moral force are often confused, but they are two things entirely distinct. The body of the passive agent who suffers moral force need not in any way be touched or moved, as we shall sec in the following section.

Fear—Fear *(metus)* in the passive agent is the result of *moral* force *(vis moralis)* exercised by the active agent. The two terms are correlative, and related to each other as effect and cause. Moral

force moves the *will,* not the body. This it does indirectly in the form *of* threats, blows, etc.

Acts done through fear are valid unless the fear was so grave as to deprive a person momentarily of the use of reason. Saving this extreme case, the law presumes that knowledge and intention sufficient to perform a human act arc compatible with the state of ordinary grave fear. At the most, one's liberty has been impaired.

Because of the impairment of his liberty, the law, to redress the injury done to the passive agent of grave fear, compensates him either by declaring the act invalid *ab initio,* or by granting the injured party the right to a rescissory action.

When done under grave fear the following acts are *ipso jure* invalid: marriage, the resignation of an office or benefice, a vote cast in an election, reception of orders, admission to the novitiate, religious profession, private vows, assistance at marriage, the remission of ecclesiastical penalties.

In all other cases the injured party can ask that the act be rescinded, i. e., declared void and of no effect. Until the court rules on the question, the act remains valid.

But the fear must have been *grave.* Whether it is absolutely grave or only relatively grave is immaterial. Fear is absolutely grave when it can overcome a steadfast man, e. g., the fear of death, loss of limb, imprisonment, loss of worldly fortune, etc. It is relatively grave if it is sufficient to overcome the mind of this or that individual in view of his weak constitution, or for other reasons. Nothing is more difficult to prove than the presence of relatively grave fear in marriage annulment suits.

The fear must also have been *unjustly* inflicted. Fear of death occasioned by a grave illness, by a shipwreck, etc., cannot be said to have been unjustly inflicted ; and a vow, e. g., pronounced under these circumstances would remain valid. Whenever the virtue of justice is violated by him who threatens the evil, the resultant fear may be said to have been unjustly inflicted, e. g., where the father of a seduced girl threatens the young man with death unless he takes her in marriage. But if the father threatens a lawsuit, and under the influence of this threat the man contracts marriage, the marriage will be valid, since the father had a right to bring suit.

Fraud—Fraud *(dolus)* is the deliberate misrepresentation of some fact in virtue of which another acts through error.

If the resultant error is substantial, the act is invalid *ab initio* by reason of error.

If the error is accidental, the law can make the act rescindable at

the petition of the defrauded party. But in four cases accidental error resulting from fraud invalidates the act *ab initio:* 1) a vote cast in an election; 2) resignation of an ecclesiastical office or benefice; 3) admission to the novitiate; 4) the making of religious profession.

Error—Error is a faulty judgment or conclusion, a mistake. Theoretically, it differs from ignorance which is *habitual* lack of knowledge, and from inadvertance or forgetfulness which is *momentary* lack of knowledge. But in practise, and as far as juridical effects arc concerned, error, ignorance, inadvertance and forgetfulness are governed by the same legal principles, namely:

Substantial error always invalidates an act placed under the influence thereof. *Accidental* error resulting from fraud likewise, invalidates an act in the four cases enumerated above. Outside of these four cases accidental error does not invalidate an act when it results from fraud, but may give cause for a rescissory action, or, if the plaintiff prefers, he may simply bring suit to recover damages leaving the contract intact. Aside from fraud, error in itself, when only accidental, will give cause for a rescissory action if one's loss exceeds by half the real value of the thing bargained for (c. 1684, §2).

Substantial error is present: 1) when it concerns the substance of the act; 2) when it amounts to a *conditio sine qua non* though objectively affecting only the accidentals, but because of the *conditio sine qua non* in the mind of the agent, the objective accidental quality becomes subjectively a substantial one. These are rather vague principles, and the ecclesiastical judge will do well to study the civil law doctrine on this point since in the matter of financial contracts canon law adopts the civil law generally speaking. In many cases, where the defendant is a cleric, the ecclesiastical authorities will permit suits involving contracts to be taken to the civil courts.

But since the marriage contract is always reserved exclusively to the courts of the Church, the doctrine of error in connection with marriage has been more thoroughly developed, as we shall sec.

Note—Coercion (tw), fear, fraud, error, ignorance, inadvertence and forgetfulness can affect not only the validity but also the licitncss of acts. How far these various factors excuse from sin and exempt one from penalties decreed against violations of the law, must be studied in the light of the principles found on pages 670 ff., 681.

§2. Consent and Advice (c. 105)

On the theory that two heads are better than one the law requires that in certain matters of grave importance, or where the

rights of third parties arc at stake, the superior may not proceed without consulting others, and occasionally without obtaining their consent. In which cases advice, and in which cases consent, must be obtained by the superior cannot be explained at this time; the Code must be perused throughout. Thus, e.g., a bishop must consult the synodal judges when transferring a reluctant pastor; a major religious superior must have the consent of his chapter or council to admit a novice to profession, etc.

Whenever the law states that the superior needs the *content* of others, it is to be understood that such consent is needed for the validity of his subsequent act; i.e., the superior in this case acts invalidly should he proceed without the consent of those whom the law designates.

If the law requires only that the superior seek the *advice of* others, e. g., *de consilio consultorum, audito capitulo, parocho,* etc., it suffices for validity that these persons be consulted. The superior need not follow their advice. But he would act imprudently to proceed against the wishes and opinion of a very large majority.

When several are to be consulted, or their consent is to be obtained, it is the desire of the lawgiver that these persons be called together, so that the whole matter can be discussed by all in the open, before the question is voted upon. If only one or the other need be consulted, this can be done by letter, unless particular law rules otherwise.

§3. Order of Precedence (c. 106)

In every society there arc those who by reason of greater authority, dignity, age, etc., deserve more deference. This is manifested externally in the Church, especially in public functions, assemblies, etc., by what is known as the right of precedence.

The following rules govern precedence. They apply both to physical and moral persons. They are intended to preserve public order, and to avoid confusion. They arc privileges in a sense, but privileges given by way of law, which the individual is not at liberty to renounce, no matter how democratically inclined he may be in other matters.

Representation— This is the first criterion to determine precedence. He who represents another occupies his place of honor. But where several prelates of the same rank are present, those who are present in a vicarious capacity yield precedence to those who are present in person.

Authority— Whoever exercises authority over another takes precedence over him, e. g., a residential bishop in respect to his priests, a provincial in respect to the religious subjects of his province, a local superior with respect to the subjects of his house, etc.

Rank— Among several persons none of whom has authority over the other, those of higher rank (office, dignity) precede those of lower rank. Thus, e. g., an archbishop precedes his suffragans (office), a titular bishop precedes all priests (dignity).

Order— Among those of the same rank precedence is given to those of higher orders. Thus, e.g., in a public procession priests precede deacons, and deacons precede subdeacons.

Priority— *Of* those belonging to the same rank and order, they precede who were first promoted to the rank. In the case of bishops promotion to the episcopal rank dates from the day of nomination by the Holy Sec, not from the day of consecration or installment in office. This same rule applies in the case of episcopal transfer to another ecclesiastical province; precedence not being determined from the date of transfer (Code Comm. Nov. 10, 1925; *Acta* XVII, 582).

Seniority— If promotion to the same rank occurred on the same day, he precedes who was first promoted to the order.

Rite— Difference of rite is no determinant of precedence.

Among *moral persons* precedence is governed by particular rulings found in various parts of the Code, cfr. c. 491 and c. 701. If two or more corporations of the same rank, grade, etc., happen to be present, e.g., Dominicans and Franciscans, those who have been established in the locality the longest take precedence. Should contentions arise, the local Ordinary has the final word, but recourse *in devolutive* may be taken later against his decree. Among members of the same moral body, precedence is determined by the statutes of the corporation, e. g., the constitutions of a religious organization.

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ON CLERICS

Section One

ON CLERICS IN GENERAL

In Section I we shall treat of clerics in general before passing on to consider in Section II the law on clerics in particular. That is to say, wc shall first study those principles which apply to all clerics irrespective of the rank or office the}' may hold in the Church.

We shall divide the present section into four chapters, and shall discuss: 1) the clerical state in general; 2) ecclesiastical offices; 3) ordinary and delegated power; 4) the privileges and obligations common to all clerics.

Chapter I

THE CLERICAL STATE IN GENERAL

In five articles wc shall consider: 1) the definition of a cleric; 2) the nature of the power of orders and the power of jurisdiction; 3) the hierarchy of orders and the hierarchy of jurisdiction; 4) how entrance into the sacred hierarchy is effected; 5) the principal systems of church government in non-Catholic sects.

ART. I.

Cleric Defined

(c. 108, §1.)

Cleric *(clericus)* is derived from the Greek *kleros.* 'This word corresponds to the Latin *sors,* and signifies that which is chosen from among many and set apart. Hence, from the earliest times those who were chosen from among the faithful to exercise the sacred ministry in the Church were called clerics. All persons not so chosen were called laics, or laymen, from the Greek *laos,* which corresponds to the Latin *plebs,* i. e., the populace.

In general then, clerics are those members of the Church who occupy positions of preeminence cither by reason of the power of orders or the power of jurisdiction. In other words, the clergy arc they who teach, the laity are they who are taught ; the clergy sanctify, the laity are sanctified ; the clergy rule, the laity obey.

However, even those who arc merely preparing for the sacred ministry, and who have as yet received no power of orders or of jurisdiction are classed as clerics provided their admission as candidates has been confirmed by the rite known as the first tonsure. In the very technical sense, therefore *a cleric is a man who has been admitted tn the sacred ministry at least in virtue of the first tonsure,* (c. 108. §1).

The tonsure, it should be noted, is not an order in itself. It is rather a rite preliminary to orders much as betrothals are a prelim-

inary to marriage. As a sacred rite it was not introduced into the Church before the eighth century. First tonsure is conferred by the bishop, and consists in a partial shearing of the hair from the head of the candidate for holy orders. Two reasons probably underlie this ceremony: 1) juridically, the candidate now appears publicly before the Church as the subject of the common privileges and obligations of the clergy; 2) mystically, the aspirant is reminded of his duty to cultivate humility and to forsake the superfluous things of this life.

The *first* tonsure, we said, is conferred by the bishop. The tonsure must be privately renewed from time to time in virtue of the common law which makes the habitual wearing of the tonsure obligatory upon all clerics. But in virtue of contrary custom the clergy of this country do not wear the canonical tonsure.

ART. II.

Power of Orders and of Jurisdiction

That which substantially distinguishes clerics from laymen is the two-fold power of orders and of jurisdiction.

The power of orders is that in virtue of which Mass is offered, the sacraments and sacramentals are administered, and public worship is conducted. The power of jurisdiction is the same as the power to govern and rule. To celebrate Mass, e.g., requires the power of orders; to legislate concerning the time, place and manner of celebrating Mass requires the power of jurisdiction.

More specifically, the two powers may be distinguished as follows: 1) by reason of their *object',* the power of orders refers directly to the sanctification of souls; jurisdiction refers directly to the maintenance of public order in the Church; 2) by reason of their *source,* the power of orders is received in virtue of ordination; the power of jurisdiction comes to one through an ecclesiastical office, or by an act of delegation; 3) by reason of *extent',* the power of orders is the same quantitatively in all clerics who have received the order in question ; the power of jurisdiction may be limited as to territory, persons, subject matter, etc.; 4) by reason of *duration',* the power of orders is never lost, and acts placed in virtue of such power arc always valid even though performed by excommunicated and suspended clerics; jurisdiction, on the other hand, may be lost with loss of office, recall of delegation, suspension, etc.

ART. III.

Nature of the Sacred Hierarchy
(c. 108, §2, 3)

Not all clerics share the same amount of power, whether of orders or of jurisdiction, but there is a sacred hierarchy among them in virtue of which some clerics are subordinate to others.

The sacred hierarchy *(hiera* sacred, and *arche* power, or ruling authority) is the totality of the sacred powers vested in the Church but as attaching to different orders and offices in varying degrees.

The sacred hierarchy of *orders* consists of eight grades as follows: 1) the episcopate (which some do not consider as an order distinct from the priesthood, but merely as the enlargement and plenitude of the priestly powers) ; 2) the priesthood; 3) the diacon* ate; 4) the subdiaconate; 5, 6, 7, and 8) the orders of acolyte, lector, exorcist, and doorkeeper. St. 'Thomas explains how these various orders relate to the Eucharist : 1) the priest consecrates the Eucharist; 2) the deacon dispenses the same; 3) the subdeacon prepares the matter of the sacrament in *sacred* vessels; 4) the acolyte prepares the same in *non-sacred* vessels; 5) the lector instructs those preparing to communicate; 6) tile exorcist purifies those who are tempted by satan from receiving the Eucharist; 7) the doorkeeper bars entrance of unbelievers to the Church where the Eucharist is consecrated.

The sacred hierarchy of *juriediefion* consists of the papal office, the subordinate episcopate, and all ecclesiastical offices which share in the jurisdiction of the Pope or the bishops. For it must be noted that while the papacy and the subordinate episcopate arc of divine origin, yet as the Church grew in membership and spread into many lands, its government necessarily became more complex. It became necessary for the Pope and the bishops to call other clerics to assist them in ruling the faithful by assigning to such clerics permanent duties and powers, thus creating ecclesiastical offices of an inferior nature. Thus, e.g., the Pope is aided in the government of the universal Church by the Cardinals, the Roman Curia, Vicars and Prefects Apostolic, papal legates, archbishops, etc. The bishop in turn has his vicar-general, official, chancellor, rural deans, etc. The jurisdiction of all clerics other than the Pope and residential bishops, must be considered a vicarious jurisdiction; they receive their ruling power not directly from God, hut they exercise it in the name of the Pope or the bishop whom they represent.

Having described the nature of the sacred hierarchy we are bet-

ter prepared to understand how the clerical state is of divine origin. From the viewpoint of the power of orders, bishops, priests and deacons constitute a clerical state by divine law; while subdeacons, and clerics in minor orders constitute a clerical state by ecclesiastical law alone. The reason is that the episcopate, the priesthood and the diaconate are sacred orders instituted by Christ; whereas subdeaconship (in all probability), and minor orders certainly have been instituted by the Church. Likewise, from the viewpoint of jurisdiction the papacy and the subordinate episcopacy constitute a clerical state by divine law; whereas all other offices in the Church belong to clerics only in virtue of ecclesiastical law. Thus, nothing would forbid vesting a layman with ecclesiastical jurisdiction, e.g., with the office of ecclesiastical judge. As a matter of fact, however, it is more becoming that ruling authority be conferred upon those who already are superior to laymen by reason of the power of orders.

ART. IV

Entrance into the Sacred Hierarchy
(c. 109)

Contrary to the doctrine of the so-called Reformers, Catholic theology teaches that no man can perform acts of the sacred ministry referring to the celebration of Mass and the administration of the sacraments unless he has been first empowered to do so through the grace received in the sacrament of holy orders. The call of the people is not sufficient, but one enters the hierarchy of orders through ordination. This is a requisite of divine law when there is question of celebrating Mass, of consecrating or administering most sacraments. It is of ecclesiastical law only when there is question of placing acts reserved to clerics in minor orders, so that custom can tolerate that such functions, e.g., that of acolyte (server) be discharged by laymen.

Entrance into the hierarchy of jurisdiction is effected only through *canonical mission.* By this is meant the conferment of jurisdiction by the competent ecclesiastical authority. It was when they were sent *(missio, mittere)* by the Saviour to baptise and to preach the Gospel that the Apostles received their jurisdiction in the Church. So today, clerics must figuratively be sent by those who are the direct successors of the Apostles; bishops being sent, i.e., appointed to their sees by the Pope; the vicar-general, diocesan con-

suitors, pastors, etc., by the bishop. Therefore, neither the consent or call of the people, or of the civil ruler is required, much less suffices, to confer ecclesiastical jurisdiction. If at one time the laity participated in ecclesiastical elections, this was in virtue of toleration or privilege on the part of the ecclesiastical authorities. If even today some secular rulers have a voice in the choice of bishops, this is in virtue of privilege granted by the Pontiff, and not in virtue of any original inherent right in the civil ruler himself.

The Pope alone needs no canonical mission to obtain jurisdiction proper to his office. Or rather, he receives his mission directly from God once a canonical election has been conducted by the cardinals, and the office has been accepted. It is obvious that the cardinals cannot grant the Pope his authority, namely jurisdiction in the universal Church, nor infallibility, prerogatives which they do not themselves possess.

ART. V.

Non-Catholic Systems of Church Government

We may distinguish three such general systems: the episcopal, the presbyteral and the congregational.

Episcopalianum—Considered as a form of church government, and not as designating a peculiar set of doctrines proper to any one denomination, episcopalianism recognizes the supremacy of bishops over priests as of divine right. The system is found among the Orthodox Orientals and the Anglicans.

Like the Catholics, the Orthodox Orientals and the Anglicans believe in Apostolic succession. However, they deny the papal primacy of jurisdiction, and at most accord the Pope a primacy of honor due to the antiquity of the Roman See. Supreme authority in the universal Church, which to them comprises the Roman, the Orthodox and Anglican branches, is vested only in ecumenical councils. They also deny papal infallibility.

The intervention of the civil ruler is permitted in the appointment of bishops, and this the ruler does either directly or indirectly through a synod controlled by himself. If Christ conferred all ruling authority in the Church on the Apostles, as is evident from the Gospels, and if nowhere we find Him granting the least share thereof to Caesar, it seems incomprehensible how the Orthodox and Anglicans who hold to the episcopal system, can accord the civil ruler the above right to appointments as a right inherent in his office.

Presbyterianism—In his effort to give the Protestants an efficient pian of ecclesiastical government after their rupture with Rome, Calvin excogitated a system which he considered more in harmony with that obtaining in the primitive Church. As he saw it, there was no real, but only a nominal difference between the *efiiscofii* and the *presbytères* of those days. Both names designated the ciders of the particular churches. The elders as a body supervised all the affairs *of* the congregation. '1'hese *presbytères* were not priests as we understand them; they were only laymen. Ordained clerics did not exist in the Catholic sense of the word. 'The laying on of hands, of which we read so much in the literature of those days, was not a sacrament, and conferred no peculiar spiritual powers. In a very short time, moreover, the more ambitious among the *presbytères* succeeded in gaining authority over the other elders of the congregation, and these came to be called *episcopi* exclusively. The episcopal system, therefore, according to them, is not of divine institution, but owes its origin to human intrigue.

In the presbytcral system as proposed by Calvin, and as based upon the preconceptions described, all authority is vested in representative bodies, not in individuals, for so it was in the primitive congregations *(Ecclesiae),* where the body of ciders held all authority. There are lay ciders and ordained elders; the former rule, the latter both teach and rule (ministers). The lay ciders, together with the pastor as presiding officer, form the *session* which supervises the affairs of the congregation. The deacons attend to the temporalities. All officers are chosen by the session. Above the session we find the *presbytery* exercising jurisdiction over a number of congregations within a given territory. Higher than the presbytery is the *synod* which governs a number of presbyteries. Still higher stands the *general assembly* as the court of last resort in the whole Church (sect).

'The term presbyterianism also designates the peculiar doctrines of certain sects, e. g., those of the Church of Scotland. Here we understand the term as indicative of a form of government adopted by many sects no matter how variant from one another they may be in point of doctrine. As a system of church polity presbyterianism is found among practically all those Churches which trace their doctrine to one or the other of the so-called Reformers, e. g., the Lutherans of Germany, the Dutch Reformed, the Presbyterians of Scotland and Northern Ireland, etc.

Since these sects reject the sacramental system and the Mass, there is no need of holy orders. At most they admit baptism and the Lord's Supper, and while these functions are as a matter of fact

reserved to the minister, any-layman could likewise perform them on the theory that all laymen are priests: *vos estis regale sacerdotium*. Any layman can in point of theory lead in prayer and conduct public worship. The laying on of hands is still practised, but this is a mere ceremony constituting the candidate a licensed minister, i.e., licensed (permitted) to preach the Word. By an ordained minister is meant one who has been given the spiritual charge of a parish, or congregation.

Compared with the constitution of the Catholic Church we hnd these discrepancies: 1) there arc no clerics as distinct from laymen by reason of holy orders; 2) all jurisdiction resides ultimately in the faithful who in turn delegate it to the representative bodies described above; those bodies represent the faithful, just as in their judgment the Apostles represented the Church universal, so that the authority conferred on the Apostles directly by Christ should revert to the faithful upon their death, and the faithful in turn would govern the Church as they saw fit, which in Calvin's theory took the prcsbyteral form; 3) while there is a well-organized system of government based along hierarchical lines, this hierarchy is not of divine institution, but man-made, and the entire plan could be discarded at any time for some other; 4) the officers (with us *clerics)* are constituted in authority by the call of the people; where the consent of the civil ruler must be had, this is on the theory that the faithful have delegated their authority to him in those matters.

Congregationalism—Of all non-Catholic church polities this is the most democratic. Each congregation (house of worship) is a Church in itself. It chooses its own officers, and is subject to no outside jurisdiction. And while the individual churches of the same denomination (for there is a mother church from which they all branch out) feel the need of consulting their sister churches on matters of doctrine and discipline, and for this purpose even hold conventions at stated intervals, yet the deliberations so arrived at are not regarded as juridically binding.

The title *Congregational* likewise designates a particular denomination which was planted on our soil by the early Pilgrims. After their form of organization all other sects similarly constituted in point of government, if not of doctrine, arc named, e.g., the Baptists Unitarians, Adventists, American Lutherans, etc.

As in the presbyteral, so also in the congregational system there are no holy orders. They believe that the call of the congregation gives ministerial authority to a preacher.

It belongs to dogmatic theology to expose the fallacy of the

foregoing systems. The study must be based not upon the text of the New Testament alone, but mostly upon the history of the early Church and the writings of the Fathers. The New Testament is rather vague concerning the divine constitution of the Church. Hence, it is not surprising that the so-called Reformers and their disciples, who rejected tradition as a source of revealed doctrine, should have strayed so far from the truth on this point.

Chapter II

ECCLESIASTICAL OFFICES

Clerics receive the power to sanctify through holy orders. This subject will be considered in Book III among the sacraments.

At this time the Code considers ecclesiastical offices through which clerics receive the power of jurisdiction. That is to say, all jurisdiction derives ultimately from an office in the Church. If there is question of ordinary jurisdiction this is inherent in every office: if there is question of delegated jurisdiction, this is conferred by a cleric vested with ordinary jurisdiction attached to an office he holds, which in turn he shares with another cleric not in possession of the like office.

In three articles we shall discuss: 1) the nature of ecclesiastical offices; 2) their conferment; 3) their loss.

ART. I.

Nature of an Ecclesiastical Office
(c. 145)

While in the broad sense any task undertaken in the Church may be called an ecclesiastical office, e. g., the position of organist, janitor, etc., still in the strict sense an ecclesiastical office is a *position permanently created by divine or ecclesiastical law which carries with it either the power of orders or of jurisdiction.*

It is essential, therefore, to an ecclesiastical office that the post enjoy objective stability or perpetuity. Hence, a chaplaincy created for one or two years is not an ecclesiastical office, but the position must be one which has to be filled whenever a vacancy occurs. And so, powers conferred for a transient task amount to a delegation. However, subjective stability is not required, and so we can have parishes with removable pastors. In fact, most ecclesiastical offices are removable ones.

It is likewise essential that the office shall have been instituted

either by divine law, e. g., the papacy, or by ecclesiastical law, c. g., the office of synodal judge, vicar-general, etc. And so, an office instituted by the civil authority or by private individuals, even though its aim be of a charitable or religious nature, would not constitute an ecclesiastical office.

Finally, an ecclesiastical office, to be such, must carry some power either of orders, e. g., a chaplaincy, a canonry, or of jurisdiction, e. g., the office of bishop, vicar-general, etc. Therefore, as was said, the office of organist in a church cannot be considered an ecclesiastical office in the strict sense, since an organist as such requires neither the power of orders nor of jurisdiction. Likewise, the office of local and major superior in religious *nan-exempt* organizations is not an office in the strict sense of the word. However, where the Code contains no special legislation on offices in religions, and provided the particular law *of* the religion is silent, the common law on ecclesiastical offices in the strict sense may be applied also to such religious offices in virtue *of* the analogy of law permitted by canon 20.

But to be a benefice an ecclesiastical office must moreover assure the othce holder a permanent revenue. This temporal and material aspect of ecclesiastical offices will be considered in Bk. **Ill** in the chapter on benefices.

ART. II.

Conferment of Ecclesiastical Offices

An ecclesiastical office may be conferred in four ways, and the Code contains special rules for each of these modes of canonical provision. But before proceeding to this point the Code lays down some general principles which apply to every kind of canonical provision.

§1. Conferment of Ecclesiastical Offices in General

No ecclesiastical office may be validly obtained without an antecedent canonical provision. By canonical provision is meant the grant of the office by the competent superior made in accordance with the rules which are to follow (c. 147). This grant on the part of the ecclesiastical superior is called *free appointment* if the superior was free to choose the candidate; it is called *institution* if the candidate was presented or nominated by a person other than the superior; it is called *confirmation* if election preceded; it is called *admission*

when postulation preceded ; finally, it is *election* simply in the case where elections require no confirmation on the part of the superior (c. 148, §1).

No person may be confirmed, admitted or instituted following election, postulation and presentation or nomination respectively, unless he is first judged fit for the office by his proper Ordinary, even though this may require an examination (c. 149).

An office which is not vacant *de jure* may not be validly conferred. If the office is *de jure* vacant, but not *de facto,* e.g., due to the presence of an intruder, it suffices that the superior when granting the canonical provision make mention of this fact (c. 150, §1; 151).

The mere promise of an office can beget no juridical effect, since it is the desire of the Church to suppress unholy ambition and the abuse of simony. Only the Roman Pontiff can appoint a coadjutor with the right of succession (c. 150, §2).

§2. Conferment of Ecclesiastical Offices in Particular

There are four modes of filling vacant offices: 1) by free appointment ; 2) by election; 3) by postulation; 4) by presentation or nomination.

A. Free Appointment

Most vacant offices are filled by free appointment *{libera collatio).* This is the act by which the competent superior confers an office upon the candidate of his choice. It remains free appointment even where others must be consulted, e.g., where me pastor must be consulted in the appointment of an assistant pastor. Likewise it is free appointment where a parish must be filled through the method known as *concursus.*

In a disputed case concerning which way the office may be filled, the law both presumes that the office is one of free appointment, and that the appointment belongs to the local Ordinary (c. 152).

The clerical candidate must possess those qualifications which the law demands for the office in question. These qualifications arc found under the various headings of the Code which treat of different ecclesiastical offices in detail, e. g., under bishops, vicars· general, etc. Also particular law must be consulted for possible additional requirements, e. g., the constitutions of a religious organization may demand a more advanced age for the novice master, the provincial, etc., than the Code calls for. Whether these qualifi-

cations are required for validity or only licitness will also be ascertained from the same common or particular law (c. 153).

Other things being equal, the office should be given to the worthier candidate, i. c., the more qualified candidate. Thus, of two clerics who are equally learned and prudent, an office which calls for greater executive ability should be given to him who possesses this gift in a higher degree. It is left to the superior to decide who is the worthier candidate among many, and no action for rescinding the appointment can arise on this score (c. 153, §2).

An office which calls for the care of souls, c. g., a parish, can be conferred only on a priest (c. 154).

All offices must be filled at least within six months from the date of vacancy. But for vacant parishes whose provision usually requires greater deliberation and thought, the law permits the Ordinary to defer the appointment for a longer period if necessary (c. 155; 458).

No cleric can be given two incompatible offices. Those offices are incompatible which cannot be discharged at one and the same time by the same cleric. In particular, two offices must be considered incompatible; 1) if the law specifies this with regard to certain offices, e. g., that of judge and actuary in the same trial; 2) if two offices which are located in different places call for the law of residence, e. g., two parishes; 3) if two offices must be discharged in the same place at the same time, e. g., two canonries; 4) if of two benefices one suffices for the becoming maintenance of a cleric (c. 156). A cleric who takes peaceful possession of an office incompatible with the first thereby forfeits the first office (c. 188, n.3).

All appointments should be in writing. This is for the licitness, not the validity, of the appointment, and is designed to obviate litigations later on (c. 159).

B. Election
(c. 160-178)

Many ecclesiastical offices at the present day arc filled by way of election. This is true, e. g., of the papal office, of bishoprics in certain European countries, in the case of the diocesan administrator, and of most offices in a religious organization.

What follows concerning the method of conducting ecclesiastical elections is the legislation of the Code. If particular law enlarges the obligation of the common law, i. e., insofar as it is legislation

praeter jus commune, particular law prevails, as where a two-thirds majority is necessary to elect the Pope according to the Constitution *Vacante Scde Apostolica* which is found at the end of the Code (c. 160).

(1) *Time for Holding Elections* (c. 161).

Every election must take place within at least three months from the vacancy of the office. But particular law may rule otherwise.

Failure to hold an election within the prescribed time deprives the voters for that occasion *of* the right to elect. The vacant office is then filled by free appointment on the part of the superior who had the right to confirm the election.

The three months for holding elections must be so computefl that the time does not transpire if the electors are impeded from holding the election.

(2) *Convoking the Electors* (c. 162)

Since voting by letter or proxy is generally forbidden in ecclesiastical elections, the voters must be present. It belongs to the president of the electoral college to convoke the voters, and to decree the time, place, and other circumstances of the election.

Failure to convoke an elector does not invalidate rhe election. But if any individual elector was overlooked, and therefore was absent, he has the right to petition the superior to rescind the election.

Failure to convoke a third of the electors automatically invalidates the election.

(3) *Absentee Voting* (c. 163, 168)

All who have been convoked must be personally present in the place of the election if they wish to vote. As a general rule absentee voting is forbidden under pain of invalidity.

If an elector is present in the house but because of sickness cannot come to the room where the electors are convened, the tellers may go to his room to receive his vote.

(4) *Invalid Votes*
(c. 167; 170)

The following votes arc invalid: 1) votes cast by persons not qualified to vote; 2) a vote which one gives to himself; 3) votes which are not secret; 4) uncertain votes; 5) blank votes; 6) conditional votes; 7) disjunctive votes; 8) votes cast under the influence of grave force or fear. We shall consider these points singly.

The following persons cannot cast a valid vote: 1) persons incapable of a human act; 2) persons under the age of puberty; 3) those under censure, or infamy of law, after sentence has been passed by the ecclesiastical court; 4) heretics and schismatics; 5) all who have been deprived of active voice in punishment.

Λ vote is invalid which a person gives to himself. In ecclesiastical elections, unlike civil elections, every effort is made by the law to suppress unholy ambition.

Those votes are invalid which are not secret. In ecclesiastical elections ever}' effort is likewise taken to preclude wounded feelings, a precaution essential particularly in a religious community where the electors must live a common life. Secrecy is also a safeguard against simony.

To maintain secrecy the votes should be in writing, and the ballot folded when cast. Prior to the election two tellers are appointed to take up the ballots, and to count and read them in the presence of the presiding officer. Both the tellers and the president arc under oath of secrecy not to reveal the names of the voters, i. e., the manner in which they voted. Moreover, after the ballot, or if several ballots are held in one session, after the session, the votes arc to be burned (c. 171, §4).

The confidential manifestation of one's vote to two or more persons docs not invalidate the vote whether this is manifested during or after the election. The revelation of one's vote publicly before the majority of the electors would render that vote invalid but not the balloting. A vote invalid by reason of want of secrecy does not in itself invalidate the entire election. The vote is simply not computed with the rest.

Uncertain votes are invalid. Under this head come illegible votes and blank votes.

Conditional votes arc invalid. To expedite elections the votes must be absolute. To vote for Titius provided he introduces such and such reforms would be equivalent to suspending the election. The same suspense would be involved in the necessity of ascertaining

beforehand the verification of conditions *de praesenti* or *de praeterito* attached to a vote.

To be valid the vote must be determinate, not disjunctive. One does not express his will sufficiently should he vote for "Titius or Cajus."

Finally, the vote must be free in the sense that if one is constrained through grave fear or fraud to vote for this or that candidate, his vote is invalid.

(5) *Number of Votes Required to Elect* (C. 174)

Unless particular law rules otherwise, an absolute majority is required and suffices for election. An absolute majority is any number over half of all the *valid* votes cast. Invalid votes are not reckoned ; they are simply thrown out, and the majority is computed from what remains

If in the first and second ballot no candidate receives an absolute majority, then in the third ballot the relative majority suffices. We have already explained this subject elsewhere (cfr. p. 132).

Sometimes particular legislation is more severe. It may demand an absolute majority in every ballot; it may be satisfied with a relative majority only in the tenth, fifteenth ballot, etc.; it may demand a two-thirds majority, as in the election of the Pope.

(6) *When the Ballot Is Invalid*

We have seen which votes arc to be considered invalid. Sometimes one invalid vote suffices in itself to invalidate the whole election, but not always. It remains to be seen when the ballot *(scrutinium)* is invalid.

An election is invalid:

1) If more than a third of the electors were not convoked and were absent (c. 162, §3);

2) If a person not a member of the electoral college is admitted to vote, saving lawfully acquired privileges. The statutes of the corporation specify which members have the right to vote (c. 165) ;

3) If a layman interferes in any way with the canonical freedom of an election (c. 166) ;

4) If an excommunicated person knowingly was admitted to vote, even though he was a member of the electoral body, and provided sentence of excommunication had been passed upon him (c. 167, §2) ;

5) If an invalid vote was decisive, namely if the candidate-elect needed precisely that one vote to complete the majority required (c. 167, §2) ;

6) If the election was infected with simony (c. 729) ;

7) If the number of votes cast exceeds the number of voters. Here is must be remembered that no one may cast two votes in his own name even though he should be entitled to vote for more than one reason, e.g., bring at the same time an ex-provincial, a doctor of theology', a delegate of some convent, etc. (c. 171, §3; 164) ; .

8) If the candidate-elect does not possess the qualifications required by common or particular law for the office in question under pain of invalidity (c. 153, §3).

Generally speaking, if a ballot is invalid, a new ballot *(scrutinium)* is taken. If the invalidity is discovered only after the election is over and the electors have returned to their homes, and it is not convenient to recall them, a *sanatio in radice* may be asked of the Holy Sec. If the invalidity of an election remains undisclosed, acts placed by an invalid office holder are valid in virtue of common error (cfr. p. 167-168).

(7) *Confirmation* o/ *the Election* (c. 177)

Most elections need no confirmation. This is true of the election of the Pope, vicar-capitular, diocesan administrator, etc. In such cases the election confers upon the candidate full right to the office, or the *jus in re.*

In many religious organizations with a centralized form of government elections must be confirmed by the competent superior as specified by the constitutions. Here the election confers only a *jus ad rem.* But since it is the object of the law in requiring confirmation merely to make sure that the candidate possesses the qualifications for validity, and that the election was otherwise canonically conducted, once this is ascertained the superior cannot refuse to confirm the election. Usually it is the superior next in authority to the elected person who grants confirmation, e. g., the provincial confirms the election of a local superior, the general confirms the election of the provincial, the Holy Sec confirms the election of the general.

(8) *Election by Compromise*
(c. 172-173)

Unless the law rules otherwise in the case of some particular office, the electors can choose their candidate by compromise *(electio per compromissum).*

To elect by compromise means that all the voters unanimously agree in writing upon one or more persons to whom they will transfer for that occasion their right to choose the candidate.

Election by compromise is an expedient for breaking a deadlock. Where the common law obtains a deadlock is impossible. The reason is that the relative majority in the third ballot determines the candidate. Deadlocks can more frequently happen where an absolute majority is required by particular law in every ballot, or where a two-thirds majority is required.

C. Postulation
(c. 179-182)

When a candidate for office labors under some canonical impediment he cannot be elected, c. g., if he lacks the required age. In this case the electors can by their majority vote only request (postulate) the superior that he dispense the candidate from the impediment and admit him to office.

Postulation is conducted in precisely the same way as an election ; there is no need of any preliminary agreement to postulate. The very fact that a cleric who is impeded from office receives votes shows that those voters are postulating for him.

Ordinarily the ballot *(schedula)* cast for a candidate who needs postulation should read: *postulo Titium. Cajum,* etc. A vote which reads *eligo vel postulo* will count for election if the candidate has no impediment, but for postulation if he is impeded. It is disputed whether a vote which reads *eligo* in place of *postulo,* or vice-versa is invalid. In practice to avoid this pitfall the ballots are usually printed *postulo vel eligo.* In that case the voter merely adds the name of the candidate of his choice without cancelling either of these words.

The number of votes required to postulate is the same as for election if all candidates who are receiving votes labor under some impediment which debars them from office. That is, an absolute majority is required in the first two ballots, and a relative majority in the third ballot suffices where common law obtains.

If postulation concurs with election a *two-thirds majority is*

required to postulate. Postulation concurs with election when in the same ballot votes are cast for one or more candidates who are not impeded (election) and other votes arc cast for one or more candidates who arc under impediment (postulation). In that case justice dictates that the door to the office be opened more readily to him who labors under no impediment.

To clarify this by an illustration, where the common law obtains: If three persons A, B and C receive votes in the first two ballots, and A and B are elective candidates with no impediments. while C needs postulation, an absolute majority given to either A or B in these two ballots will determine the election, while C will require a two-thirds majority. Suppose that none receives the absolute majority required and the election passes into a third ballot. Here a relative majority will suffice for cither A or B, while C still needs a two-thirds majority. This was decided by the Pontifical Committee July 1, 1922 *(Acta* XIV, 406). And so, if 21 valid votes were cast in the third ballot, 5 going to A, 3 to B and 13 to C, in this case A must be considered elected. If only A and C were in the running in the third ballot 8 votes would elect A, C would need 14.

When a candidate receives the required number of votes for postulation, it is left to the superior to admit or reject the petition of the electors. The postulated candidate has not even a *jus ad rem* to the office. Dispensation from the impediment is a pure favor to which the candidate can claim no strict right. Against the refusal of the competent superior to admit the postulation there lies no relief. The election must be resumed.

D. Presentation and Nomination (c. 1448-1471)

Presentation of a candidate is another way of providing for vacant offices. To show her appreciation toward those of the faithful who contributed of their material means to the construction or upkeep of sacred edifices, or the endowment of benefices, the Church in past ages was wont to grant such patrons the right to present to the vacant church, chapel, benefice, etc., a cleric of their choice. This was called the right of patronage or of advowsan *(jus patronatus).* No new rights of patronage may arise under the law of the Code. Those existing at the time of the Code's promulgation remain intact.

In the United States the right of patronage is unknown. The II Plenary Council of Baltimore (n. 184) expressly declared that no offerings of the faithful, whether in the form of pew rent, plate

collections, salaries, subscriptions to purchase land or to construct a church could in any way be considered as conferring the right of patronage. In this country bishops have the right of free appointment to all secular parishes.

By nomination is meant the presentation of a candidate by some one other than a patron of a church or benefice. For centuiies the Roman Pontiffs have accorded to Catholic rulers certain rights with respect to nominating to vacant secs, and in some cases to parishes and other benefices. Such rights arc granted as a rule through concordats.

In the United States the civil authorities have never interfered in the freedom of ecclesiastical elections. Although Catholic bishops, and even pastors, are persons of influence in the political and social life of the nation, no danger to the American system of government or to a political party from such clerical influence has ever been conceived sufficiently serious to cause civil interference in ecclesiastical appointments. For this we are indebted to the absence in our country of that excessive spirit of nationalism which for centuries has been the curse of European nations.

ART. III.

Loss of Ecclesiastical Offices
(c. 183-195)

An ecclesiastical office is lost in five ways: I) by resignation; 2) by deprivation; 3) by removal; 4) by transfer; 5) by lapse of term (c. 183, §1).

By the going out of office of the superior who conferred it, the office is not lost, save in two cases: 1) where the law so provides, as in the case of the vicar-general who loses his office simultaneously with the bishop; 2) if the superior when conferring the office added the proviso: *ad beneplacitum nostrum,* or its equivalent (c. 183, $2).

Resignation— Any cleric who is in possession of his mental faculties may resign his office, unless he is expressly forbidden by the law to do so. Thus, e. g., a novice is forbidden by c. 568 to resign his benefice prior to profession. As concerns religious office-holders, they may be forbidden by their constitutions to resign their office.

Although no special prohibition to resign exists, still there must be a just cause authorizing the resignation, e. g.. loss of the cleric's

good name in the parish, a change of climate for reasons of health, advanced age, etc.

A resignation does not take effect until it is accepted by the superior who conferred the office. Even so, the office does not become vacant until the resigning cleric has been informed of the acceptance of his resignation. Hence, he may not quit his office immediately upon resigning.

For validity the resignation must be made in writing, or orally before two witnesses. The document of resignation must be preserved in the archives of the Curia against the eventuality of the cleric's later regretting his step, and starting a litigation.

The superior must cither accept or reject the resignation within one month of its being tendered. Should he fail to do so, however, a new resignation is not required, but he may accept the resignation even after the lapse of a month, unless the cleric has recalled his resignation, which he may do at any time prior to its acceptance (Code Comm., July 14, 1922; *Acta* XIV, 526).

Resignations extorted through grave fear or force, simony or fraud, are *ipso facto* invalid.

The following acts carry with them tacit resignation (c. 188):

1) Religious profession as described in c. 584;

2) Failure to take possession of an office within the time specified;

3) Acceptance of a second office incompatible with the first, and in this case the first office is considered vacant automatically by reason of tacit resignation;

4) Public apostacy from the Catholic faith;

5) Voluntary enlistment in the militia;

6) Marriage, though it be merely a civil marriage;

7) Failure to resume the clerical garb within a month after the Ordinary's warning;

8) Failure to resume residence within the time specified by the Ordinary.

Privation of office may he decreed for a punishable offense, or for purely administrative reasons, e. g., advanced age of the incumbent.

One cannot be deprived of an irremovable office save for an offense and by way of a formal trial. The offense must be one which is punished in law with privation of office. But in the cases described on p. 655 irremovable pastors can be deprived of their parishes in an administrative manner without a formal trial.

As to removable offices, a cleric can be deprived of the same

either for administrative reasons or for some offense. And the offense need not be among those punished by the law with privation. Nor is it necessary that a formal trial take place.

Transfer— Usually a cleric is not simply removed from an office and left to his own resources, but he is given another office, i. e., he is transferred.

In the transfer of pastors the procedure outlined on p. 658 is to be followed. In all other cases no special mode of proceeding on the part of the superior is defined in the law, save where the transfer is not voluntary but compulsory. In the latter case the transfer is equivalent to privation of office, and what was said under that head above applies at this place.

When a transfer is effected, the first office becomes vacant only after the cleric has taken possession of his new office. In the meantime his revenues accrue to him from the first office, unless the Ordinary rules otherwise.

Chapter III

ORDINARY AND DELEGATED POWER

Having seen how the power of orders is received through ordination, and the power *of* jurisdiction through an office or by delegation, it remains to learn the rules that govern the *proper exercise* of both powers.

ART. I.

Exercise of Orders

The episcopal, priestly and diaconal power of orders cannot be delegated. The power of minor orders can be delegated. Thus mere laymen, as boys, serve at Mass and act as acolytes. Whether the power of the subdeacon can be delegated to one who has not received that order is disputed, since there exists a controversy whether subdiaconate is of divine or ecclesiastical origin.

Certain functions, though reserved to bishops, arc not derived through episcopal consecration, and so may be delegated or committed to priests. Thus by law, and again by privilege or papal induit, some priests are empowered to confer minor orders, to confirm, and to perform various consecrations (c. 210).

The power of orders is never lost, even through suspension or through degradation to the lay state. This is in virtue of divine law when there is question of the episcopate, priesthood and diaconate, and probably of the subdiaconate. It is in virtue of canon law alone in the case of minor orders. That is, the Church expressly wills that the power received through minor orders be considered permanent. And so a cleric in minor orders returning to the clerical state after quitting his studies, need not be reordained.

ART. II.

Exercise of Jurisdiction

Jurisdiction in general— We have already seen how the power of jurisdiction differs from the power of orders (p. 140). It

remains to point out the different kinds of jurisdiction, and to state the rules that govern their proper exercise.

Ecclesiastical jurisdiction may be divided into the following classes: 1) jurisdiction of divine law, and jurisdiction of ecclesiastical law; 2) original and vicarious jurisdiction; 3) legislative, administrative and judicial jurisdiction; 4) jurisdiction of the external forum, and jurisdiction *of* the internal forum; 5) contentious and voluntary jurisdiction; 6) ordinary and delegated jurisdiction.

Often these different categories overlap; they do not mutually exclude one another. A priest appointed to preside at a definite court trial is exercising at one and the same time a jurisdiction that is vicarious, of ecclesiastical law, judicial, of the external forum and delegated. This will become clearer as we proceed.

§1. Jurisdiction of Divine and Ecclesiastical Law

Jurisdiction is of divine law if it flows from an office created by divine law. There are only two such offices: the papacy, and the subordinate episcopate. All other offices in the Church being of ecclesiastical origin, the jurisdiction which they confer is said to be of ecclesiastical law (origin), e.g., the jurisdiction of the vicar-general, of diocesan judges, etc.

§2. Original and Vicarious Jurisdiction

Original jurisdiction is that which a cleric exercises in his own name; vicarious jurisdiction, as the word indicates, is that which a cleric exercises in the name of another. All vicars in the Church exercise such power, e. g., the vicar-general exercises his jurisdiction in the name of the bishop. Say the same of the vicar-forane or rural dean, of the diocesan official, and of all clerics who enjoy only delegated power. But note well, that while all delegated jurisdiction is vicarious, not all vicarious jurisdiction is delegated, as will appear from what is to follow. Archbishops, patriarchs, abbots, the officials of the Roman Curia, vicars and prefects Apostolic, the diocesan administrator—all these are papal vicars.

§3. Legislative, Administrative and Judicial Jurisdiction

Those who make laws for a society exercise legislative power. Those who enforce these same laws outside of court exercise administrative power, called also executive jurisdiction. Those who enforce the law in court by way of a trial by deciding litigated questions of law or fact, exercise judicial power.

Most modern civil governments divide all power in the State into three branches, and no one department can invade another. But in the Church by divine law this three-fold power is vested in the Pope for the universal Church, and in each residential bishop for his diocese. But the Pope and the bishops can share their authority with other clerics if they choose to do so. In point of fact this is what happens. And so the Pope and the bishops are relieved of much work which they could not personally discharge. Sometimes it is administrative jurisdiction which these clerics participate in, e. g., the vicar-general's jurisdiction is of an administrative nature, as is also the jurisdiction of the Roman Congregations. To the diocesan official the bishop gives judicial power, and the Pope gives the same to the Roman Rota. It is not customary for the Pope or bishops to share with others their lawmaking authority. Decrees and instructions which emanate from the Roman Congregations, and orders issued by the vicar-general, are not strictly speaking formal law, but merely administrative acts (cfr. p. 96-98).

§4. Jurisdiction of the External and Internal Forum

Jurisdiction which has for its immediate object the maintenance of external order in the ecclesiastical society (church universal, diocese, religious Order, prefecture Apostolic, etc.) is called jurisdiction of the external forum. In virtue of this jurisdiction doctrine is defined, laws are enacted, appointments to offices are made, church property is administered, litigations are decided, and punishments arc inflicted.

Jurisdiction which has for its immediate object the sanctification of souls is called jurisdiction of the internal forum. In the order of time jurisdiction of the internal forum possibly preceded jurisdiction of the external forum. For the primary mission of the Church was, and is, to save souls. Only because the maintenance of public order was a necessary requisite to this end, did she acquire jurisdiction of the external forum. Civil rulers exercise only jurisdiction of the external forum. They have only one function to perform. namely, to maintain public order among the citizens of the State. An example will illustrate the presence of both kinds of jurisdiction in the Church. A confessor when absolving from sins is exercising jurisdiction of the internal forum. The superior who legislates concerning the qualifications of confessors, or who confers upon a particular priest confession faculties, is exercising jurisdiction of the external forum.

To the internal forum belong the preaching of the gospel, the

administration of the sacraments, the conducting of public worship, and the granting of dispensations, commutations, and pardons in occult cases, e.g., in the case of occult marriage impediments, occult irregularities and censures.

The internal forum, which is also called the forum of conscience, is divided into the internal sacramental forum, and the internal extra-sacramental forum, depending on whether conscience in occult cases is relieved in the sacrament of penance, or outside of the sacrament.

Rules of law that govern the exercise of the jurisdictions under question are:

1) An act of jurisdiction exercised in the external forum is valid likewise for the internal forum, but not vice versa (c. 202, §1). Thus, marriage impediments and censures of a public nature which are removed outside of confession need not be removed again in the confessional.

2) When jurisdiction is granted for the internal forum in general terms, it can be exercised in cither the sacramental or the extra-sacramental forum, unless the nature of the matter calls for the sacramental forum (c. 202, §2). This means that an occult impediment can be removed without the need of a party going to confession for that purpose, it sufficing that the cleric notify the party that the impediment is here and now removed. But faculties to absolve from a reserved sin must, by the very nature of the case, be exercised in sacramental confession.

3) If the forum was not mentioned when jurisdiction was conferred, it may be exercised in either the external or internal forum, unless the nature of the case dictates one definite forum, c. g., public impediments are removed in the external forum (c. 202, §3). This simply means that a public record of the act should be kept; the dispensation must be recorded in the parish and diocesan books, and when this is done, the act of jurisdiction has been exercised in the external forum. The same test applies to absolutions given in the external forum ; a record thereof is kept in public files. No record is kept of acts of jurisdiction performed in the sacramental forum, because of the sacramental seal. Where an occult matter is not revealed solely through confession, and the seal does not bind, since the matter is occult it belongs to the internal forum, and is not recorded in public registers, but in special records kept in the secret archives of the chancery, if a record is necessary.

§5. Contentious and Voluntary Jurisdiction

In ancient Roman law, when the judge had to give a decision in a case where either party was unwilling to appear in the litigation,

his jurisdiction was considered contentious, and he had to proceed by way of a solemn trial. But if both parties willingly asked for the judge's intervention, the jurisdiction of the judge became voluntary jurisdiction, e. g., in adoption and emancipation cases.

The distinction was carried over and remains in canon law. But the test whether jurisdiction is contentious or voluntary is no longer found in the object but in the mode of procedure. If canon law calls *for* a formal trial in litigated matters, the jurisdiction involved is called contentious; if the superior can proceed without observing the formalities *of* a trial, he exercises voluntary jurisdiction, whether the party whose interests are at stake is willing or unwilling to have him act. Therefore, acts of contentious jurisdiction are those only which are placed by a judge during the course of a court trial. All other jurisdictional acts in the Church arc acts of voluntary jurisdiction, c. g., the enactment of laws, and decrees, instructions, etc., the giving of precepts, the granting of dispensations, appointments to offices, extra judicial infliction of penalties, etc.

Rules of law—Contentious jurisdiction cannot be exercised in one's own behalf, because *nemo judex in causa propria,* or no judge can try his own case (c. 201, §2). Neither can the judge set up court outside of his territory, unless he has been forcibly expelled from his territory, or is impeded from returning to his territoy *(ibid.).*

Voluntary jurisdiction, however, can be exercised even to one's own benefit, and outside of one's territory, or toward a subject outside of one's territory (c. 201, §3). In the first supposition, one who can dispense others, e. g., from fast, can dispense himself. In the second, a bishop while absent from his diocese could nevertheless make appointments. To illustrate the third case, a bishop could grant to a student priest away from the diocese permission to read books on the Index within limits.

Jurisdiction, whether contentious or voluntary, cannot be exercised except over one's own subjects. But, sometimes, the law or induit makes exceptions. 'Thus, penitents coming from outside the diocese can be absolved by any approved confessor in the diocese where they happen to be visiting. A bishop in virtue of quinquennial faculties may usually dispense transients from impediments in cases where he could dispense his own subjects.

§6. Ordinary and Delegated Jurisdiction

Definitions—*Ordinary* jurisdiction is that which the law attaches to an *office; delegated* jurisdiction is that which is attached or given to a *person* without reference to any office he may, or may not,

have. (cfr. c. 197, §1). There arc many powers which the Code, e. g., attaches to the episcopal office. These can be delegated to any or all priests, unless the law forbids delegation. Thus, the bishop can delegate priests to dispense from the banns of matrimony if a just cause is present for the dispensation. The bishop is empowered by law to absolve from certain censures reserved to the Holy See. He can delegate his priests as confessors to absolve in virtue of general faculties to that effect, etc. All this is said merely by way of illustrating the difference between ordinary and delegated jurisdiction. Much more will be said presently about some involved rules of c. 199-200.

The above must be kept in mind when, as we so often do, we meet the words *Ordinary* and *local Ordinary* in the Code. One would think that any cleric who enjoyed ordinary jurisdiction in the external forum ought to be called an Ordinary; but this is not true. Such a one may be called a *prelate,* e. g., a synodal judge; but *Ordinary* has a very technical and restricted meaning.

Under the term *Ordinary* come only the following: 1) the Roman Pontiff; 2) residential bishops; 3) abbots and prelates *nullius;* 4) vicars and prefects Apostolic; 5) those who temporarily fill the office vacated by any of the foregoing, e. g., a diocesan administrator; 6) vicars-general ; 7) major superiors in clerical exempt religions (c. 198, §1).

By *local Ordinary* are meant all the above excepting religious superiors (c. 198, §2).

Rules of law governing the exercise of ordinary and delegated jurisdiction;

1) He who possesses ordinary jurisdiction can delegate it wholly or in part, unless the law expressly provides otherwise (c. 199, §1). The Code Comm, declared that pastors cannot delegate confession faculties, although they possess ordinary power to hear the confessions of their subjects (Oct. 16, 1919, *Acta* XI, 477).

2) Jurisdiction *delegated by the Holy See* can be subdelegated either *ad actum* or *habitualiter* (called also *per modum habitus,* and *ad universitatem negotiorum},* unless one was chosen delegate for personal reasons (stated in the rescript, e. g., because of learning, prudence, experience, etc.), or unless subdelcgation was expressly forbidden (as sometimes happens with certain cases falling within the bishop's quinquennial faculties, because they are cases the Holy See wishes to keep under strict control). This ruling will be found in c. 199. §2.

Therefore, generally speaking, a bishop may subdelcgate the

chancellor to grant marriage dispensations without restricting their number, provided his quinquennial faculties empower the bishop himself to dispense from those impediments. Again, if the bishop is himself empowered by the Apostolic faculties to absolve from certain censures reserved to the Holy Sec, he may subdclegate Fr. John to absolve Titius in his stead. This is subdclegation *ad actum,* namely whenever the case for which one may act is designated and specified in such a way that it cannot be mistaken for any other case. Fr. John knows whom he has in mind when he asks for faculties to absolve a certain penitent without revealing the latter's name. But the bishop may subdelegate to one or all of his priests general faculties to absolve from censures reserved to the Holy See, which he possesses in virtue of his quinquennial faculties. This is habitual subdelcgation, because the cases that will arise cannot be foreseen, and therefore are not designated or specified in any way.

3) We considered above what happens if the Holy Sec delegates. Now suppose a cleric inferior to the Roman Pontiff who is vested with ordinary jurisdiction should delegate, does the same rule as under (2) apply ? Partly it docs, and partly it does not.

If *habitual* delegation is granted, say by the bishop, to, e. g., his rural deans to absolve from censure or sin all who contract, say, civil marriage (we suppose this to be a reserved case in the diocese), and Fr. John instead of sending the penitent to the dean, requests from the dean the faculty to grant the absolution himself, the dean could subdelcgate Fr. John in the case proposed to him. But the dean could not grant Fr. John habitual subdelegation, and herein we find a slight difference in the rule stated in (2).

There is another difference. If the Holy Sec delegates the bishop *ad actum* the latter can generally subdelegate, as we saw. But if the bishop delegates *ad actum* his ordinary power, the delegate cannot subdclegate, unless the bishop should expressly state this. And so, if nothing was said to that effect, if Fr. John obtained faculties from the bishop in the above case to absolve the nupturients, and on the appointed day for the confession he is called away, he cannot subdelegate his assistant to hear the confessions of the penitents and absolve them. And so we find that provision for this contingency' is often found in the absolving faculties on occasions of this nature. These rules under (3) are found in c. 199, §3,4.

4) No subdelcgated jurisdiction can be subdelcgated again unless this privilege was expressly' granted. And so, if Fr. John above obtained faculties from the dean, Fr. John is now subdelcgated, since the dean was already himself delegated, and in the event of a

hurried departure as stated, Fr. John could not subdelcgate his assistant, unless the dean had expressly so stated (cfr. c. 199, §5).

N. B. The rules contained in canon 199 arc among the most difficult to master that can be found in the Code, and at the same time they are of such frequent application that time spent in trying to comprehend them will always be time put to good use and profit.

§7. How Jurisdiction Ceases

1. Ordinary jurisdiction ceases *permanently* by loss of office. *Temporarily,* it ceases: a) if the office holder incurs excommunication or suspension; b) when appeal is taken from a court sentence, the jurisdiction of the judge is meanwhile silent and inoperative in respect to the case appealed (c. 208).

2. Delegated jurisdiction ceases:

a) With completion of the delegated task, c. g., after the trial is over in the case of a delegated judge (c. 207).

b) With lapse of time if delegation extended to a definite period, as in the case *of* quinquennial faculties *(ibid.).*

c) When the number of delegated cases is exhausted, e. g., after the fifth absolution if a confessor was delegated to absolve from five reservations. But acts placed inadvertently in the internal forum are valid even after the time has expired, or the number of cases has been exhausted *(ibid).*

d) If the motive of the delegation ceases, e. g., if litigating parties compromise, or in a matrimonial suit are reconciled before the delegated judge has arrived at the sentence *(ibid).*

e) With recall of the delegation. But the recall takes effect only after the delegate has been notified of the recall *(ibid).*

f) With renunciation of delegation on the part of the delegate. But the resignation does not take effect until the delegating authority accepts the resignation *(ibid).*

g) Upon vacancy in the office of the delegating authority, delegation ceases only in two cases: 1) if the rescript conferring delegation expressly so provides; 2) if the delegate has been empowered to grant a favor to some specified person *(gratia facienda),* and has taken no steps as yet to execute the favor e.g., a matrimonial dispensation petitioned from the Holy See. But the quinquennial faculties of local Ordinaries do not cease upon vacancy of the Holy See *(ibid).*

§8. How Jurisdiction Is Supplied

In three cases the Church supplies jurisdiction: 1) when jurisdiction granted for the internal forum overruns its time or number of cases through inadvertance; 2) in a common error; 3) in a positive and probable doubt (c. 209).

The welfare of the faithful demands that jurisdiction be supplied in a common error. Thus, a priest visiting in a strange diocese absolves validly even though the pastor for whom he is supplying may have forgotten to ask confession faculties for him. Here the penitents are persuaded that the priest has the power to grant them absolution.

Virtual common error suffices, and *actual* common error is not necessary before the Church supplies jurisdiction, at least according to the majority of writers. Common error is virtual once the foundation has been placed from which common error can arise, e. g., as soon as the visiting priest enters the confessional. It is not necessary that a large section of the parish first confess to the stranger.

But to exercise jurisdiction licitly in a common error a grave reason is required. In the illustration above it would be gravely inconvenient for the visitor to discontinue hearing confessions should he become aware of lack of delegated faculties. But the pastor in the case would sin gravely did he neglect asking for confession faculties on the theory that the Church will supply.

Also in a positive and probable doubt the Church again supplies jurisdiction. It matters not whether the doubt be one of fact, e. g., is this penitent in actual danger of death to warrant me, a simple confessor, to absolve from his reserved censure in virtue of c. 2252, or whether the doubt be one *of* law, c. g., can I, a major superior in a clerical non-exempt religion, absolve my fugitive subject from his censure (cfr. p. 714). For the rest, every doubt which rests upon some sensible argument is probable, and if probable, necessarily positive at the same time, since a negative doubt is one in favor of which no convincing, but only a vacuous reason is offered.

Chapter IV

THE RIGHTS, PRIVILEGES, AND DUTIES COMMON TO ALL CLERICS

All clerics have certain rights, privileges and duties in common. These we shall consider in the present chapter. Later, we shall devote our attention to rights, and duties which in addition to these common ones, some clerics have by reason of the office they hold in the Church.

ART. I.

Common Rights of Clerics

All clerics, regardless of how high or low they rank in the hierarchy, enjoy the following rights: 1) the right to holy orders; 2) the right to ecclesiastical jurisdiction; 3) the right to ecclesiastical offices; 4) the right to ecclesiastical benefices and pensions (c. 118).

By this we do not mean that all clerics will actually come into possession of all the above rights. Rather, the above might better be called clerical prerogatives in the sense that clerics alone are entitled to them to the exclusion of the laity.

ART. II.

Common Privileges of Clerics

These are four: 1) the privilege of the canon; 2) the privilege of the forum; 3) the privilege of exemption; 4) the privilege of competency.

§1. Privilege of the Canon (c.119).

This privilege has for its object to protect clerics against bodily injury. Clerics are privileged in this protection, or we may say

clerics enjoy a privileged protection, in the sense that those who violate this privilege arc guilty *of* sacrilege and incur excommunication.

It is called the privilege of the canon because it was inserted into the 15th canon of the II Latcran Council (1139). In the Middle Ages civil courts were not so well organized as at the present time so that many wrongs went unpunished, or their punishment was considered a matter of private vengeance. As a result, clerics as well as laics became liable to bodily injury at the hands of aggrieved persons. To protect at least rhe clergy against such possibilities was the reason for the present privilege.

Only real injuries are intended. The injury must be external also. It may consist in bodily harm through physical blows; or an affront to the cleric's dignity, as spitting upon him; or an impairment of his liberty, e. g., imprisonment. The injury must be deliberate, and not accidental. The excommunication which such offense carries with it is incurred automatically, and is a reserved one (c. 2343).

§2. Privilege of the Forum (c. 120)

In virtue of this privilege clerics enjoy immunity from lay courts in both civil and criminal suits, so that they cannot be cited as *defendants* save before the church courts, without previous permission obtained by the plaintiff from the competent ecclesiastical superiors to sue in the lay court.

But clerics may be cited to appear as *witnesses* in lay courts, unless professional secrecy is involved, and saving criminal trials where the accused is threatened with a grave punishment (c. 139, §3).

However, civil law courts are better equipped to administer justice today than in times past. And as a result there has been some modification of the privilege of the forum. Permission is easily granted to sue a cleric in the lay court in purely temporal, not spiritual causes, e. g., purely private contracts, but not where neglect of clerical office is the basis of the charge. This the Church reserves to herself.

Competent to permit suing clerics in lay courts are: 1) the Holy See if a cardinal, papal legate, a bishop, an abbot or prelate *nullius,* the supreme head of a clerical exempt religion, or the major officials of the Roman Curia are to be cited; 2) the Ordinary in the case of all other clerical defendants.

In many countries the privilege of the forum has fallen into desuetude. In the United States this is only partly true. That is, custom with us permits a layman to sue a cleric in civil court, provided spiritual matters are not at issue; but a cleric may not sue another cleric without the bishop's permission (Eccl. Review, Sept., 1912, 313; III Plen. Counc. Balt. n.84).

§3. Privilege of Exemption
(c. 121)

In virtue of this privilege clerics are exempt from military service, and from all duties alien to the clerical state. Such duties are described on p. 182.

At one time the clergy were exempt also from taxation on their lay holdings. This was a gratuitous concession of the civil ruler, and has for a long time ceased to exist. However, the Church claims as a matter of divine right immunity from taxes on property that belongs to moral persons in the Church on the theory that no sovereign society can be compelled to pay tribute to another society. In the States of the American Union all church property is usually free of taxes as a matter of privilege accorded by the state governments, church corporations being regarded as either charitable or educational institutions.

§4. Privilege of Competency
(c. 122)

In virtue of this privilege a cleric may not be sued for debts beyond his present capacity (competency) to satisfy, if by so doing he would deprive himself of the means of livelihood becoming his clerical state.

The obligation to satisfy one's creditors is not extinguished, but is merely suspended until such time when the cleric will find it possible to pay his debts in full.

In the past, when a creditor could have his debtors confined to prison for failure to pay their debts, the privilege of competency accorded to clerics was not without special advantage.

§5. Origin of Clerical Privileges

Let us distinguish between the *historical* and the *juridical* origin of clerical privileges.

Historically, they may be traced to the concessions of the Roman Christian emperors, saving the privilege of the canon. Later, they became part of the civil law in the Holy Roman Empire, then of

the civil law in states outside the Empire, and remained civil law until the eighteenth century, at least in Catholic countries.

As to their *juridical* origin we have three opinions: 1) That the privileges are of *divine* law, because by divine law the clerical state is superior to the lay state, so that it is incongruous for clerics to be judged by those over whom the divine law has appointed clerics the judges. But to this it is answered that clerics as clerics are superior to laymen, but as mere citizens clerics are not above laymen. 2) That the privileges are of *human* origin only, having been introduced by the Christian rulers. To this it is answered that such a statement explains their historical, but not their juridical origin. 3) That the privileges are both *divine* and *ecclesiastical* in origin. They arc divine *fundamentally* and *remotely,* being based upon the exalted dignity of the clerical state. They are of ecclesiastical law and origin *formally* and *proximately* insofar as the Church has the authority to change their form and content in view of exigencies and changes brought about by time. In other words, how the dignity of the clerical state, which is of divine law, shall be protected, and what forms this protection ought to assume, is of ecclesiastical law. This third opinion is supported by two arguments: a) the Council of Trent refers to clerical privileges in the aggregate as: *immunitatem Dei ordinatione et canonicis sanctionibus constitutam;* b) the Church has *de facto* modified the privileges from time to time through concordats, and even abolished them in certain instances, which she could not do were the privileges in their present form of divine origin.

^6. Present Status of Clerical Privileges

The French Revolution introduced separation of Church and State for the first time. And since then, and wherever separation obtains, clerical privileges are no longer recognized by civil governments.

But in virtue of concordats clerical privileges remain in some countries in mitigated form.

In the United States the clergy of all denominations have been exempt from military service by special congressional acts on the occasion of different wars. It is considered a privilege deriving from the government alone. The privilege of the forum our States do not recognize. The privilege of competency has become a common prerogative of all citizens in modern civilized countries.

ART. III.

Common Obligations of Clerics

Under this article wc shall consider: 1) incardination as the first duty of all who aspire to the clerical state; 2) the positive duties of clerics; 3) their negative duties.

§1. Incardination and Excardination

Incardination in general— Every cleric must be incardinatcd into some diocese or some religious organization, so that vagrant clerics are not to be tolerated (c. 111).

Incardination is the act by which an aspirant to the clerical state becomes subject in his future clerical capacity to a definite bishop, or to the superiors of a definite religious Order or Congregation.

The object of the law requiring incardination is two-fold: 1) to provide a means of surveillance over the clergy by subjecting them to some definite superior; 2) to assure every cleric of decent maintenance becoming his state. For, the bishop who ordains a man, with the understanding that he will take him into his diocese, is responsible for his maintenance, at least during his good standing. And since at the present day, such maintenance usually derives from a salary received in compensation for ministerial services in the diocese, the bishop will not ordain and incardinate more men than are needed for the diocese (c. 969).

An aspirant to the religious life in clerical religions is not incardinatcd into any diocese. When he takes perpetual vows, he becomes incardinatcd into the religion, and the religion must support him (c. 585).

Modes of incardination— Incardination can take place in four ways: 1) by the reception of first tonsure; 2) by explicit letters of excardination and incardination; 3) by the conferment of a residential benefice; 4) by acceptance of an ex-religious on the part of a benevolent bishop.

1) By the reception of first tonsure a cleric is incardinatcd into that diocese for whose service he is promoted to orders (c. **111,** §2). This is usually the diocese where the aspirant has his domicile, but it need not be. The bishop of present domicile may be the proper bishop to *ordain,* but because he personally ordains does not imply that he *incardinates* the cleric into his diocese. An understanding

may have been reached between the aspirant, his ordaining bishop, and the bishop of another diocese who is incardinating the cleric.

2) By letters of cxcardination and incardination, a cleric who has already been incardinated into one diocese can transfer to another diocese, e. g., because his health requires a change of climate. Here he needs *written* letters, one from the bishop willing to incardinate him, the other from his present bishop granting him excardination. Both incardination and cxcardination must be unconditional and perpetual (c. 112).

3) By conferment of a residential benefice (c. 114). This is called *virtual* incardination because the incardinating bishop need not issue *written* letters of incardination, but the law presumes incardination in the act of giving the cleric a benefice, e. g., a parish. However, the bishop of the first diocese must grant written letters of excardination, or give written permission to the cleric to leave the diocese forever.

4) By acceptance of an ex-religious on the part of a benevolent bishop. This happens when a religious in major orders quits his community having been dispensed from perpetual vows, and desires to remain in the ministry. It is treated later under the head of secularization.

We should point out a fifth method, where a secular cleric takes perpetual vows in a religion, this act of itself excardinates him from his diocese, besides incardinating him into his religion (c. 585).

Conditions for licit incardination—These are three: 1) the incardination must be necessary or useful to the diocese; 2) the bishop must have testimonials of good character from the candidate's diocesan curia if he incardinatcs a man who has his domicile in another diocese; 3) the man from another diocese must take an oath to serve forever the diocese he is being incardinated into (c. 117).

§2. Positive Duties of Clerics

Positive duties or obligations are those which have for their immediate object the sanctification of the cleric, whereas *negative* duties are those which aim at securing respect for the clerical state.

Positive duties include: 1) exercises *of* piety; 2) spiritual retreats; 3) recitation of the breviary; 4) clerical obedience; 5) theological examinations and conferences; 6) clerical celibacy; 7) common life; 8) the wearing of the clerical garb; 9) residence. In the performance of these duties clerics will succeed in attaining that degree of sanctity, higher than the laity, which the law expects of them (c. 124).

A. Exercises of Piety

Local Ordinaries must see to it: 1) that clerics frequently go to confession; 2) that daily they spend some time in meditation, visit the Blessed Sacrament, recite the rosary, and examine their conscience (c. 125).

The same duty rests upon the religious superior with regard to his clerical subjects, as we shall see.

B. Spiritual Retreats

(c. 126)

Every secular priest must make a spiritual retreat at least once every three years. This is common law, but diocesan rulings may require annual retreats.

The length of the retreat, where it shall be conducted, the granting of exemptions—these matters are reserved to the local Ordinary.

No priest can presume exemption, but he must have a written permission to be excused.

Concerning religious clerics in this matter, as in all other duties to be mentioned, they are governed by laws of the Code contained in that part which treats of the duties of religious (cfr. p. 358). We are speaking here mainly of secular clerics.

C. Canonical Hours

(c. 135)

All clerics in major orders are bound to recite the divine office daily. This obligation starts with the day and hour coinciding with the reception of subdeaconship.

In reciting the office clerics must use the Roman breviary. They must follow the calendar of their own diocese except when outside of the diocese. In this latter case, they may say their office according to the calendar of their own diocese, or may follow the calendar of the universal Church, or the calendar of the diocese where they are visiting, unless they be beneficed clerics, in which case they keep to the calendar of their diocese and benefice (*Decreta authentica,* n. 2682).

D. Clerical Obedience

(c. 127)

All clerics are held to a special obligation to respect and obey their Ordinary. This obligation they assume when they receive first

tonsure, it being contained in an implied contract. The obligation is explicit and more binding upon priests. At the time of sacerdotal ordination, to the question proposed by the bishop; *Promittis mihi et successoribus meis . . . obedientiam et reverentiam,* they reply: *Promitto.*

The range of canonical obedience is coextensive with the bishop's right to command. And the bishop's right to command appears to be limited only in two respects: 1) he can command nothing contrary to divine or higher ecclesiastical law; 2) he can command nothing which docs not in some way refer to the salvation of souls or the sacred ministry. Thus, it seems that the bishop would exceed his authority were he to define the manner in which a cleric should invest his personal goods, or to whom he must bequeath them.

On two points only docs the Code particularize: 1) whenever, and as long as, in the judgment of the Ordinary the needs of the Church so require, and provided no lawful exemption can be offered, clerics must accept and faithfully discharge any office the bishop may give them (c. 128); 2) the bishop can command a cleric to remain in the diocese (cfr. *infra* p. 179).

E. Theological Examinations and Conferences (c. 130-131)

After their ordination to the priesthood, clerics are expected to continue their sacred studies privately. To this end the law calls for periodical examinations of the junior clergy, and for theological conferences in the case of all priests.

Examinations— Upon the completion of their theological course all priests must undergo an examination in the different branches of sacred theology annually for at least three vears. Only the Ordinary may exempt from this obligation for a just cause. A just cause is not to be found in the fact that the priest may be a pastor.

The Ordinary also determines the subject matter, the time, place and other circumstances of the examinations.

That the law may have a sanction it is ruled that, other things being equal, the results of these examinations should be considered when determining preferment for vacant offices and benefices.

Conferences— Conferences involving at least questions of moral theologj- and liturgy- must be held frequently *(saepius)* every year, both in the episcopal city and in each deanery.

They must be attended by all secular priests, and by all religious pastors and assistant pastors *(vicarii cooperatores)* even though these

belong to an exempt religion and have conferences in their own houses. Religious who are not pastors or assistant pastors, even though they have the diocesan faculties, need not attend the diocesan conferences if they have conferences in their own houses. If they have no such conferences of their own, they too must attend the diocesan conferences (Code Comm. Feb. 12, 1935; *Acta* XXVII 92).

If the diocesan conferences cannot be held, written solutions must be sent in by all who are otherwise obliged to attend.

No cleric, bound to attend the conferences, may hold himself excused without previous explicit exemption granted by the local Ordinary.

F. Clerical Celibacy

(c. 132, 133)

By clerical celibacy is meant the obligation imposed upon all clerics in major orders to observe perfect chastity, and consequently to abstain from marriage and its use.

The obligation is one of ecclesiastical law only. Introduced by custom, it did not become obligator}· in the universal Latin Church until the Council of Trent. Today, in the Oriental Church celibacy begins to bind only with the reception of the diaconatc. Those who as subdeacons, or prior thereto, contract marriage arc permitted to live a married life in holy orders. But bishops must abstain from the use of marriage, and must send their wives to some nunnery.

The obligation of celibacy is one derived from the virtue of religion so that clerics in major orders violating this law not only sin against the sixth commandment but are guilty also of sacrilege, as canon 132, §1 explicitly states. Whether or not the sacrilege results from the violation of a vow made implicitly by the cleric simultaneously with the reception of subdcaconship, which seems to be the more common opinion, or rather from the ecclesiastical law which constitutes subdeacons in the hierarchy of sacred persons, is disputed. It matters little whence the obligation derives; it is one which in any case can be traced to the virtue of religion so that violations of chastity, whether consisting of external or internal acts, whether consummated or not, will have a two-fold malice.

Clerics in major orders arc not only forbidden to contract marriage, but major orders constitute an invalidating impediment to marriage. Clerics in minor orders may validly contract marriage, but they are automatically reduced to the lay state thereby, unless they

can prove that they were forced into marriage against their consent and that as a result the marriage is invalid.

A married man is impeded from holy orders as long as his wife is living. However, with her consent, and with Apostolic dispensation. the man could be promoted to orders, but in that case use of his marriage rights would be forbidden. If a married man in good faith was promoted to orders without Apostolic induit, believing, e. g., his wife to have died during a prolonged absence, he will be forbidden to exercise his orders without a new Apostolic induit, once it is discovered that his wife is still living.

Concerning the obligation of celibacy with respect to those clerics who are forced into major orders through grave fear (cfr. p. 184-185). .

Lest clerical chastity be endangered, the law moreover prescribes that clerics shall not keep in their homes, nor visit, women who are not above suspicion. Ordinarily, they are permitted to keep in their homes, e. g., as housekeepers, those women who will not arouse suspicion. To this class belong: 1) those women with whom the cleric has a natural bond of close kinship, namely, mother, sister, aunt, etc.; or 2) women of good reputation and advanced age, by the latter term the common doctrine understanding a woman at least 40 years old.

With these women, a cleric is not forbidden to consort because, as a rule, they are presumed to constitute no danger to continency. This, however, is only a presumption of law. The presumption may be overthrown in some particular case by adverse rumor. In that case the Ordinary has the right to enjoin upon the cleric that he dismiss the woman from his home, or desist in his visits to her, as the case may be. Should a cleric stubbornly refuse to comply, the law will presume him guilty of concubinage, and the penalties established against clerical concubinage in canons 2359 will apply.

G. Common Life

(c.134)

A potent safeguard against violations of celibacy is common life among the clergy. This is highly lauded by the Code, and even made obligatory where the practice has already been introduced, as it has generally with us in the United States.

H. Clerical Garb and Tonsure

(c. 136)

Clerical garb— All clerics must wear a becoming clerical garb.

The form of the clerical dress is not prescribed by common law, but is left to local law and custom. In virtue of the decree of the 111 Plenary Council of Baltimore, n. 77, priests in this country must wear the cassock and Roman collar in the rectory and church, and for civil life the Roman collar and a suit of black or sombre hue arc prescribed.

The law prescribing a distinct garb for clerics is directed to the end "that by the simplicity' of their external dress clerics may manifest the interior simplicity and holiness of their lives."

Clerical tonsure—Unless local law or custom rules otherwise clerics are bound to wear the clerical tonsure. In the United States the custom of wearing the clerical tonsure has not been introduced.

While the Code at the same time enjoins upon clerics that they avoid all vanity and ostentation in the dressing of the hair, it docs not forbid the wearing of a wig. This, however, is forbidden by *liturgical* law, since a cleric needs an Apostolic induit to celebrate Mass with covered head.

Penalties—Clerics in minor orders who, after being admonished by the Ordinary', fail for a month thereafter to resume the clerical garb, or to renew the tonsure, are *ipso facto* reduced to the lay state.

Clerics in major orders found guilty of the same offenses are subject to suspension, and if they remain contumacious, they may be deposed from office (c. 2379).

I. Residence

(c. 143-14+)

All clerics arc bound to reside in their proper diocese. The obligation is implied in that of canonical obedience to their bishop, for how can clerics obey orders and discharge duties if they cannot he found? This applies then to all clerics, even those who have no office or benefice in the diocese. Those who hold offices and benefices arc bound to the law of residence not only in virtue of obedience to the bishop, but also in virtue of justice.

But absences from the diocese if not for a notable length of time are permitted by common law. What constitutes a notable length of time is not determined in the Code. This must be left to local law. In default of specific local legislation, some authors define it as a period of three months, others of two months, and still others of one month.

Where the absence is not for a notable length of time permission to leave the diocese is not required in the case of clerics who are

without office or benefice. But if they have an office or benefice, especially a parochial benefice, the law is stricter.

Those clerics who with lawful permission have left the diocese temporarily can be recalled by their Ordinary at any time. But in this matter the proper Ordinary must take into consideration canonical equity, i. e., he must have a just cause for recalling the cleric, e. g., the need of priests in the diocese, but he must be willing to compensate the cleric if such recall involves financial loss. Likewise, other circumstances of time, place, persons, etc., must not be overlooked so that the recall may not offend against equity, e. g., one's good name must be protected.

A cleric, even though he has left his own diocese temporarily and with due permission, may always be dismissed by the Ordinary of the diocese where he is staying. It is supposed that incardination has not taken place in this latter diocese.

§3. Negative Duties

A. Surety (c. 137)

Clerics are forbidden to give bail even on their lay holdings without previously consulting the Ordinary.

To give bail, to go bond, to give surety, means to bind oneself by contract to satisfy for the debts of another person should the latter default.

Before a cleric can give bail on *church* goods, the advice of the Ordinary docs not suffice, but his consent is necessary. The reason is that we are dealing here with what amounts to an alienation of ecclesiastical goods. This subject is discussed in Book III of the Code, and of our manual.

B. Occupations Unbecoming to Clerics (c. 138, 140, 141)

Many things which a layman could do with impunity the Church considers unbecoming to the clerical state. The Code has some general prohibitions on this head, and because they arc so general, the Ordinary is allowed to supplement them by more specific rulings. Hence, every priest ought to consult in this matter the statutes of the diocese, the decrees of his provincial council, and of the III Plenary Council of Baltimore.

1. Clerics may not practise unbecoming *trades* and *arts.* By these canonists understand such professions as persons of low rank engage in, citing as instances the trade of butcher, saloon-keeper, etc.

2. They may not indulge in *games of chance* with money at stake. Occasional card playing, and other games of chance, however, are not forbidden with small amounts of money to lend a reasonable degree of interest to the recreation.

3. They may not bear *arms* except for self-protection. But *occasional quiet* hunting is permissible. Under no circumstances may they take part in the chase *(venatio clamorosa).*

On the same score clerics may not enlist voluntarily in the militia. But in those countries where military service, or training, is compulsory for all male citizens of a certain age. clerics may, with the permission of their Ordinary, enlist before their prescribed term, the sooner to be rid of this obligation.

4. *Politics*—The Code refers to this subject indirectly when it says that clerics shall not in any way lend aid to civil war or disturbances of the public order. The original draft of the canon read: "in intestine wars and political contentions."

The clergy are not hereby forbidden to vote as citizens. Neither are they dissuaded from interesting themselves in an active way, and in the capacity of clerics, in those political issues where the rights of the Church, or the principles of true morality arc endangered, e. g., the parochial school question, the dissemination of birth control literature, divorce legislation, etc.

In questions purely political, however, which have no bearing even indirectly unon religious issues, e. g., the form of government, the manner of holding elections, the traffic control system, etc., clerics arc Strictlv forbidden to interfere.

5. *Theatres,* etc.—Clerics may not attend performances *(spectacula),* dances *(choreae),* or festivities *(pompae)* which do not become them, or where their presence may cause scandal.

By *spectacula* we must understand shows, horse races, bull fights, prize fights, etc. Under *pompae* would come parties, picnics, excursions, bazaars, etc.

It will he noticed that these recreations are not forbidden the clergy absolutely, but only: 1) if they arc unbecoming in themselves, and offensive to Christian decency; *2)* if while not in themselves censurable, yet they are so in the opinion of the public as far as clerics are concerned.

Hence, current public opinion in the particular locality must be considered, and this can change with time. Thus, certain condemnations issued in the past by bishops and councils, may now have become obsolete in view of changed public opinion.

6. *Taverns, etc.*—Clerics must not enter taverns *(tabernae)* or

other places of the like nature without necessity, or without a just cause approved by the local Ordinary.

The law here seems to refer to low-class establishments where the sight of a clergyman would cause wonderment or ridicule. It has in mind the type of tavern found in the Middle Ages when the law, of which the present canon is a restatement, was framed. Nothing prohibits clerics from putting up at reputable hotels, or from dining at respectable restaurants.

C. Occupations Alien to the Clerical State (c. 139; 142)

While not always unbecoming, the following occupations are nevertheless foreign to clerics. They are justly prohibited, either because discredit is too often cast upon the clerical state as a whole by reason of the blunders of the few, or because some of these occupations tend to distract clerics from the sacred ministry.

Without permission of the *Holy See* clerics arc forbidden:

1. To practice *medicine* or *surgery*. They may, however, study these subjects. And they may give medical and surgical assistance in an emergency. Missionaries in foreign countries will find the Apostolic induit, as here required, a convenience, if not a necessity.

2. To act as *civil notaries*.

3. To assume *political offices* which involve the exercise of lay jurisdiction. If the jurisdiction is administrative, e. g., the office of governor, mayor, commissioner, etc., or juridical in character, e. g., the office of judge, magistrate, justice of the peace, the Holy See's permission is required.

If the office involves onljr legislative powers, e.g., that of congressman, or state representative, or senator, the permission of the Holy See is not required. In this case permission must be obtained both from the cleric's own Ordinary as also from the Ordinary where the election takes place. But clerics may not without papal permission run for the office of senator or deputy in those countries where there exists a special prohibition of the Holy See to this effect. In the United States the Catholic clergy do not compete for public offices.

4. To engage in *business* or *trading*. This they may do neither personally nor through others. But we must distinguish between natural and artificial trading.

Natural trading consists in buying a commodity, and without materially changing the same, selling it at a higher price. This is

forbidden when donc solely for profit, as when one *speculates* with the stock market. It is not forbidden when done for reasons of thrift, as where a householder sells at a higher price that which in good faith he had bought in excess of his personal needs.

Artificial or *industrial* trading consists in the buying of commodities, changing their form, and selling them at a higher price. Such trading also is forbidden when labor is hired to change the form of the product, otherwise not. And so, a cleric may *personally* cultivate his own land. He may even hire labor to gather the *natural* fruits and products, even though these are sold later on.

As to *stocks* and *bonds,* a few words will suffice. While all canonists allow a cleric to buy bonds, since this is nothing more than a safe investment of money in view of interest only, not all would permit him to invest in stocks. When a person buys stocks or shares of the capital investment held by a company, he receives in turn not interest but dividends in proportion to the amount invested by him. 'These dividends represent profit realized by the company in the carrying on of its business.

Accordingly, some authors teach that the buying of stocks is equivalent to natural trading; in this case the company trading as agent of the shareholder. But the more common opinion of canonists today inclines to the view that the buying of stock is not forbidden on the score of trading. The responsibility of the average stockholder, they say, is so negligible that one can hardly consider the company his agent. It is the board of directors, not the individual stockholders, who determine the policies of the company. An agent, on the other hand, is one who must consult his principal in all matters of importance (cfr. Woywod, *o.c.* under this canon).

Without permission of their *proper Ordinary* clerics are forbidden:

1. To act as *agents* of laymen in the management of the latter's property. Hence, they cannot without permission assume the office of guardians over minor children.

But clerics may, and must, administer the goods of their benefice. A pastor is by reason of his office the official agent of the parish as concerns its temporalities, always, of course, under the supervision of the local Ordinary.

2. To accept secular *non-political offices* which necessitate the rendering of accounts. Hence, they may not be presidents, secretaries, trustees, etc., of banks, nor hold office in cooperative associations, even though composed exclusively of Catholics.

3. To act as *lawyer,* or *procurator* in a civil court. To act as

procurator means to represent «another, and to answer, or testify in his name, to take the case into one's own hands and see it through, cither because the principal cannot appear personally in court, or does not wish to do so.

From the very nature of their office, both a proxy and lawyer are largely responsible for the success or failure of a suit. Hence, clerics should not undertake these duties for laymen.

Neither may clerics *testify* in a lay court against the accused in a criminal trial if the charge is one which involves *grave personal* punishment. Here the Ordinary's permission is required. But in other cases they may depose without such permission, e. g., in a civil suit.

ART. IV.

Reduction of Clerics to the Lay State

Clerical privileges and rights arc lost, and clerical obligations in general cease, with the reduction of a cleric to lay communion.

Definition— By the reduction to the lay state we understand the *juridical* privation of all rights and privileges which attach to the clerical state by law. Incidentally this carries with it tnc cessation of all clerical obligations saving celibacy. There can be no theological but only a canonical reduction to the lay state, or degradation. That is to say, the power of orders is never lost by the laicizing of a cleric. This is in virtue of divine law so far as concerns the powers attaching to episcopal consecration, the priesthood and the diaconate, for these orders arc of divine origin and have imprinted on the soul an indelible character. In the case of subdeacons and of clerics in minor orders, the power received through ordination is not lost upon degradation, and this in virtue of the positive will of the Church. From which it follows that if clerics either in major or minor orders return to the clerical ranks after being laicized, they need not be reordained.

Modes of reduction— It is necessary to distinguish here between clerics in major orders and those in minor orders.

Clerics in major orders arc reduced to the lay state:

1) By *rescript of the Holy See* (c. 211). Here it is supposed that the cleric has petitioned a dispensation from the obligation of celibacy, e. g., a subdeacon who has grave reasons for not pursuing his clerical studies any further.

2) By *decree or sentence of the Holy See* (c. 211, §1). Here

it is supposed that the cleric questions the validity of his ordination, or the presence of the obligations attaching thereto, e. g., on the plea of having been ordained through grave force or fear. Concerning the procedure followed in such cases, cfr. p. 631.

3) By *the penalty of degradation* (c. 211,§1). But this penalty can never be inflicted except for certain crimes determined by law, and then only by way of a formal trial.

Clerics *in minor* orders are reduced to the lay state:

1) At their *request,* namely, if they wish to quit their clerical studies and return to the world (c. 211, §2).

2) By decree of *dismissal.* This is issued by the Ordinary when he judges that a cleric cannot qualify for promotion to sacred orders (c. 211, §2).

3) By the operation of law *in punishment,* (c. 211, §2). Thus, a cleric in minor orders is *ipso facto* reduced to the lay state: 1) if he attempts marriage; 2) or fails to obey the Ordinary's precept that he resume the clerical garb; 3) or voluntarily enlists in military service; or 4) is dismissed from his religion.

Effects of reduction—A cleric who has been laicized loses all church offices, benefices, ecclesiastical rights and privileges, and is forbidden forever to wear the clerical garb (c. 213, §1).

Return to the lay state frees a person from all clerical obligations, saving celibacy attaching to major orders (c. 213, §2).

One so laicized retains his power of orders forever. But all ecclesiastical jurisdiction he may have had ceases automatically.

Reinstatement into the clerical ranks calls for an Apostolic induit in the case of a cleric in major orders. The Ordinary can take back a cleric in minor orders after having first made diligent investigation concerning the man's life and morals (c. 212).

Section Two

ON CLERICS IN PARTICULAR

In Section I we considered the rights, privileges and duties common to all clerics. In Section II it will be our purpose to learn the powers, rights, privileges and duties which belong to *certain* clerics by reason of the office which they hold in the Church.

We shall divide Section II into 6 chapters as follows: 1) On the Roman Pontiff; 2) On the Pope's assistants at Rome; 3) On the Pope's assistants outside of Rome; 4) On bishops; 5) On the bishop's assistants in the government of the diocese; 6) On the bishop's assistants in the sacred ministry.

Chapter I

THE ROMAN PONTIFF

We shall consider: 1) the nature of the papal power; 2) major causes reserved to the Pope; 3) the various forms and names of papal acts; 4) the election of the Roman Pontiff; 5) how the papal office becomes vacant; 6) the titles and insignia of the Pope; 7) the Pope as temporal sovereign.

ART. L

Nature of the Papal Power (c.218)

Although the power of orders is no greater in the Pope than in any other bishop, yet his jurisdiction in the Church is supreme. For that reason he is called the sovereign pontiff or bishop.

That the Roman Pontiff enjoys not alone a primacy of honor, but also the primacy of jurisdiction, was defined as a dogma of faith by the Vatican Council (July 18, 1870) against the doctrines of the Protestant Reformers. For while it is true that Christ entrusted the salvation of souls to the entire Apostolic College, thus constituting each apostle a bishop in the Church: "Going, therefore, teach all nations . . ." (Mat. XXVIII, 18-19), and "Whatsoever you shall bind upon earth, it shall be bound also in heaven . . ." (Mat. XVI11, 18), still, in order that the episcopate might be one and undivided, He set Blessed Peter over the rest of the Apostles, charging him in a special manner with the universal care of souls, both of the clergy: "Feed My Lambs," and of the faithful: "Feed My Sheep" (John XXI, 15-17), and granting him powers commensurate with the adequate discharge of so grave a commission: "Thou art Peter, and upon this rock I will build My Church. . . . And I will give to thee the keys of the Kingdom of heaven. And whatsoever thou shalt bind upon earth, it shall be bound also in heaven . . ." (Mat. XVI, 18-19). Hence the successors in the Holy See of Rome which was founded by the Apostle Peter obtain his primacy over the whole Church.

The so-called Catholic Gallicans, Febronians, and Josephists, acknowledged in the Pope a primacy of jurisdiction, but their concept of that authority was not in accord with Catholic tradition, and so it remained also for the Vatican Council to refute the errors of the latter by explaining more in detail the nature of the papal power. As summarized in c.218 that jurisdiction is said to be: 1) supreme; 2) universal; 3) immediate; 4) ordinary; 5) episcopal, and 6) independent of all human authority in its exercise.

The jurisdiction of the Pope is *supreme* in the Church. The Pope has no superior; he is above a general council, and from his decisions there lies no appeal. His is a *universal* jurisdiction by-reason: 1) of territory; 2) of subject matter, extending to both doctrine and discipline; 3) of persons, bishops as well as the lower clergy and the laity being subject thereto. It is *immediate* jurisdic-

tion in the sense that it can be exercised not only upon appeal but in the first instance and without the intervention, or previous assent, of the local bishop. It is *ordinary* jurisdiction being attached to the papal office by divine law. It has not been delegated to the Pope by the bishops, much less by the faithful. Lastly, it is *independent* in its exercise of all human authority, particularly that of the secular ruler. For we have seen that the Church universal is a sovereign society with respect to the State. Consequently, the *appellatio ab abusu,* the *placitum regium,* and other rights claimed by the Gallicans, Josephists, etc., can no longer be defended by Catholic theologians after the Vatican Council.

The Church, then, is a monarchy by the will of Christ, i. c., by divine law, and so it must always remain. A monarchy is a society in which supreme authority is vested in one person. Moreover, the Pope is an absolute monarch in the sense that no human authority can place limits to the papal power within the spiritual scope of the Church. It is limited only by the divine law. And since the Pope is the sole infallible interpreter of the divine law, it belongs to him to determine the limits of his jurisdiction. Hence, the Code devotes only four canons to the papal office. It is easier to state what the Pope cannot do, than to list those things which he can do.

The papal primacy is in no way detrimental to the ordinary and immediate jurisdiction by which all other bishops govern their dioceses in virtue *of* divine law. That two superiors exercise jurisdiction over the same subjects need not result in confusion, provided the proper subordination of the lower to the higher power be observed. Xor have the bishops become the mere vicars of the Pope, in virtue of the above doctrine, for they still retain original jurisdiction in all matters not covered by the common law, and even here they are the ordinary executors of papal law, enforcing its observance in their respective dioceses, and being constituted judges of the first instance practically in all disputes where the common law is at issue.

ART. II.

Major Causes

As a matter of fact, however, the Pope does not exercise the plenitude of his power. He reserves only major causes to himself. Of these major causes some arc such by their very nature, e. g., the canonization of saints which implies infallibility, a prerogative which the Pope cannot delegate; others are such in virtue of positive law.

As the Church in time became more and more centralized in the See of Rome, the list of major causes grew to correspondingly greater proportions. We shall point out by way of illustration the following:

In matters of *faith* and *morals',* the Pope alone, or jointly with an ecumenical council, defines dogmas (c. 1323, §2) ; he safeguards sound doctrine through the agency of the Holy Office (c. 247, §1), prohibits dangerous books in the universal Church (c. 1395, §1) ; watches over sacred preaching, (c. 252) ; establishes Catholic universities (c. 1376) ; passes final judgment in cases of beatification and canonization (c. 1999), etc.

In matters of *discipline',* the Pope alone enacts common law, or jointly with an ecumenical council ; dispenses from the same by original right; concludes concordats with lay rulers; regulates whatever pertains to public worship including the sacraments, the sacramentels, and sacred liturgy in all its details; determines feast days; enacts marriage impediments; erects, divides, and suppresses dioceses and ecclesiastical provinces; appoints bishops; is the supreme administrator of ecclesiastical goods; reserves to himself judgment in the first instance of certain trials. Moreover, to the Pope is reserved absolution from a large number of censures.

ART. III.

Various Forms and Names of Papal Acts

The Roman Pontiff governs the Church by laws, decrees, rescripts and sentences. These are for the most part written acts, and whether issued immediately by the Pope or by the Roman Curia, they may without exception be designated papal acts. They assume a variety of names depending upon their content and form.

By reason of *content* we have the following:

1) A *constitution* proceeds immediately from the Pope. It concerns matters of either doctrine or discipline. It establishes a permanent norm in some very weighty matter; e.g., the Const. *Ineffabilis Deus* (1854) proclaiming the dogma of the Immaculate Conception; the Const. *Providentissima Mater Ecclesia* promulgating the Code of Canon Law in 1917.

2) A *motu proprio,* like a constitution is given by the Pope also. However, it does not concern faith, but only discipline, and establishes law in matters of less importance than does a constitution. The Motu proprio, c. g.. *Cum juris canonici* created the Pontifical Committee for interpreting the canons of the Code.

3) *Litterae Apostolicae,* like a *motu proprio,* are executive acts that concern disciplinary matters. Only they do not carry the clause or title *motu proprio.* Besides, they are issued by the Congregations as well as by the Roman Pontiff. They concern canonizations, the creation of cardinals, the erection of new dioceses, etc.

4) *Epistolae Pontificiae* do not concern matters of discipline at all. Rather, the Pope employs these when he wishes to speak rather as a father or teacher than as a lawgiver. In them he explains sound doctrine, though not infallibly as in a constitution, or he may exhort, instruct, congratulate, etc. When directed to the whole Church, they are called encyclicals; if but to some individual, they are called *epistolae* or *litterae pontificiae.* Sometimes, they arc issued by the Congregations and then are called *epistolae circulares.*

5) However, the acts most proper to the Roman Curia arc called decrees, instructions, declarations, decisions, resolutions and sentences. A *decree* proceeds only from a Congregation, and constitutes administrative, not formal, law. The same is the nature of an *instruction,* though the latter is more directive and less preceptive than is a decree. *Rescripts* are answers to requests for favors, e. g-, for a dispensation, a privilege, or an answer to some doubt. But if the answer is general in tone, and directed to the whole Church, though it originated through a particular individual's doubt, it is called a *declaration,* and is an *administrative* interpretation of the law. *Decisions* and *resolutions* also interpret the law but result from a litigation between two or more interested parties, the discussion being handled in an extrajudicial summary manner before some Congregation. All the above are acts of Congregations, although a few may proceed from the Sacred Penitentiary, which is a tribunal. *Sentences,* on the other hand, are the written decisions of the Roman Rota handed down at the conclusion of formal court trials.

By reason of form we have the following nomenclature:

1) A papal *bull* is a document of parchment to which is affixed a leaden seal by means of a cord of silk. On one side of the seal appear the heads of Sts. Peter and Paul, and on the other side the name of the reigning Pontiff. Bulls arc the most solemn of all papal documents in point of external form. They are the vehicles of constitutions.

2) A papal *brief* is likewise a document of parchment, but the seal it carries is one of red wax upon which is impressed the image of St. Peter drawing a net from the sea. Hence, it is called the seal of the fisherman's ring. A brief deals with matters of importance second only to that of bulls.

3) *Leiters* are documents which arc directed to particular individuals. They may be given by the Pope or the Congregations. They arc written on ordinary paper, and carry but a seal of ink.

4) A *decree* takes the external form *of* letters. This is true likewise of *rescripts.*

5) A *chirograph* is a document written in the Pope's own hand, as the name implies.

6) *Allocutions* arc formal addresses delivered by the Pope, generally in the presence of the Sacred College of Cardinals present in consistory. They often reveal the policy of the Holy See on current political or social problems.

7) *Oracles* (mvie *vocis oracula)* in the usual meaning of the word arc favors which the Pope grants by word of mouth to individuals in private audiences. They are not issued in writing, and hence are not rescripts. The favors can be used in the external forum as well as in the internal forum. But in the former case the Ordinary may demand proof of their grant. The testimony of two witnesses present at the audience, or the testimony of one cardinal is good proof.

ART. IV.

Election of the Roman Pontiff
(c. 219)

As Christ, our Lord, made no provision for St. Peter's successor, the manner of choosing the Pope had to be determined by human law.

Whether or not the Pope can designate his successor is not certain. On this question there are three opinions: some authorities would allow this right without restriction ; others would deny him the right always and under all circumstances; others again, and these seem to express the more common view, would permit the Pope to designate his successor *if* exceptionally grave circumstances so warranted, c. g., during a schism. Saving the doubtful case in which it is claimed that Felix IV (526-530) appointed his successor, the Popes have always been chosen by election. The laws, however, governing papal elections have varied.

In the beginning the bishops of Rome, like all other bishops, were elected by the neighboring bishops and the local clergy. The laity participated to the extent of bearing testimony to the good character of the candidate. At times the emperors intervened, at

first to maintain peace and order, later without such pretext and as a matter of supposed right. This led to abuses so that Nicholas II (1059) reserved the election of the Pope to the cardinal bishops. Alexander III (1179) admitted cardinal priests and deacons. From that day until the present the Pope has been elected by the cardinals only, to the exclusion of all other clergy, the laity and the civil rulers. To expedite the elections (for at times they were protracted over months and years) Gregory X introduced the law of the conclave by decreeing that the cardinals were to assemble in the palace where the Pope had died, and this not later than ten days following his death, and that all communication with the outside world was to be forbidden until the new Pope had been elected.

The present discipline governing papal elections is contained in the Constitution *Pacante Sede Apostalica* (Dec. 25, 1904). The document is appended to all editions of the Code. Its main features are substantially those of the former law:

1) Cardinals *only* have the right to vote. But *all* cardinals are admitted even though they be excommunicated, suspended or interdicted. The object of this ruling is to preclude all doubts concerning the validity of the election. For the same reason it is ruled that neither grave fear, force, simony or any other cause can be alleged to contest the validity of votes, unless the adverse influence was so great as to deprive an elector momentarily of the use of reason.

2) If the Pope should die while an ecumenical council is in session, the election of the new Pope is still reserved to the cardinals. It docs not belong to the council.

3) Upon the death of the Pope the cardinals must wait 10 days before beginning the election. This term may be prolonged eight more days (Motu proprio, Mar. 1, 1922; *Acta* XIV, 145). Cardinals who arrive after the election is begun, may still be admitted to the conclave.

4) The election should take place at Rome as a rule. But it is left to the Sacred College to choose another place if, due to exceptional circumstances, the liberty of the election might be endangered.

5) The election can be conducted by inspiration (acclaim), by compromise, or as usually happens, by ballot. A two-thirds majority is required to elect. Two ballots are held daily, one in the morning, another in the afternoon until that majority is reached.

For *validity* it suffices that the candidate be a baptized Catholic man. For *licitness* he should possess those qualifications which one

naturali) expects in the incumbent of so important an office. No law prescribes that the Pope be an Italian, although as a matter of fact, after the Pontificate of Hadrian VI (1522-1525), a German by birth, all the Popes have been Italians. Nor is it required that the candidate be a cleric, much less a cardinal, although since the time of Urban VI (1378) all have been cardinals.

ART. V.

The Papal Office, How Vacated

By divine law the Pope, once elected, holds office for life. But in addition to the death of the incumbent, the papal office may become vacant if the Pope should resign, or fall into heresy, or lose the use of reason.

Should the Pope decide to resign his office, the resignation to be effective need not be confirmed by the cardinals or by any other authority in the Church. The reason is that the Pope has no superior to whom he could tender his resignation. The only instance of resignation is that of Pope Celestine V who resigned the papal office in 1294.

If the Pope should happen to fall into heresy, he is no longer a member of the Church, much less its head. It is understood that the Pope cannot be guilty of heresy when he speaks infallibly r.v *cathedra.* The supposition is only possible should the Pope teach heretical doctrine in a private capacity. How the fact of heresy and of consequent vacancy of the papal chair would be determined is difficult to understand.

The Pope cannot be deposed by any human authority, ecclesiastical or civil, not even by an ecumenical council. The reason is that he can be judged by no man (c. 1556).

ART. VI.

Papal Titles and Insignia

From his primacy of jurisdiction there logically accrues to the Pope the primacj' of honor in the Church. This external honor finds expression in certain titles, and insignia.

As to titles, the supreme ruler of the Church is called: 1) Pope, from the Greek *Pappas,* or Father; 2) Sovereign, or Roman

Pontiff; 3) Bishop of Bishops; 4) the Holy Father; 5) His Holiness. On the other hand, the Pope in official documents frequently cefers to himself as the Servant of the Servants of God. The Pope also is *bishop* of the diocese of Rome, comprising the City of Rome and approximately 40 square miles of surrounding territory; *archbishop* of the Roman ecclesiastical province lying between the province *of* Capua and that of Pisa; *primate* of Italy; and *patriarch* of the Western, or Latin Church. These latter offices and titles have gradually lost all practical value and significance, being now absorbed by the all-embracing office of the primacy.

As to insignia and observances, the following merit chief consideration: 1) the white cassock and skull-cap which the Pope wears habitually about the Vatican palace, and the red hat which he wears in the Vatican gardens; 2) the tiara, or triple crown, which is worn only at certain solemn liturgical functions; 3) the fisherman's ring; 4) the pastoral staff ending in the form of a cross, and without the usual curvature which mystically implies a subordinate and limited authority; 5) the kissing of the Pope's foot or rather the kissing of the relics sewn into the slipper of his right foot, although this ceremony is now observed as a rule in certain liturgical functions only, the kissing of the hand being substituted; 6) precedence over all secular rulers, and precedence of his envoys over the envoys of secular rulers, this honor being confirmed also by international law.

ART. VII.

The Pope as Temporal Sovereign

With the break-up of the Roman Empire in the West, and the resultant destruction of civilization, the people of Rome and the surrounding territory instinctively turned for civil protection to the Pope, who in those turbulent times was the only authority capable of maintaining law and order. Thus began what is known as the temporal sovereignty of the Popes. Later emperors not only recognized the justice of such title, but some, like Pipin and Charlemagne, annexed provinces, which they had conquered, to the original papal domain. Thus, in time his domain came to comprise under the name of the Papal States, or the States of the Church, approximately the entire central part of what is now modern Italy.

Over this territory the Popes ruled in peaceful undisputed possession for ten centuries. At the beginning of the nineteenth cen-

tury there arose among the Italian people a desire for national unity. Under the leadership of the House of Savoy various provinces and kingdoms were gradually united, and even the papal states were invaded. On the 20th of September, 1870, the City of Rome itself was taken, and made the capital of United Italy.

While the Popes protested against the forcible seizure of the Patrimony of St. Peter, especially against the occupation of the Eternal City, at the same time they gave due recognition to the desire of the Italian people for a united nation. The difficulty was how to provide for the liberty of the Pope as the head of an international society on the one hand, without on the other hand restoring the Papal States, or even a part thereof, which in the opinion of many Italians would have amounted to national suicide. This constituted the so-called Roman question.

By the Latcran Pact of Feb. 11, 1929, the Roman question was solved. What is now known as Vatican City was restored to the Pope by the King of Italy, together with full sovereign temporal authority therein. A strip of land approximately 120 acres, called Vatican City, embraces St. Peter's Basilica and Plaza, the Vatican palace and gardens, a radio station, a railroad, postal service, mint, printing press, a small armed force, and other features designed to secure to the Pope complete temporal independence from any and all civil rulers, so that he may henceforth stand forth before the entire Catholic world as the subject of no secular power, and consequently need not fear to be suspected of partiality, or as capable of local secular pressure in framing the policies of the Church.

It should be noted that the Pope is temporal sovereign only with respect to the territory called Vatican City. Those persons who are actual residents in that small territory arc alone the Pope's temporal subjects. All other Catholics, the world over, owe to the Pontiff only a spiritual allegiance. In matters temporal they show loyalty and obedience to the laws and rulers of their respective country only.

The complete Latin text of the Lateran Pact together with illustrative maps is found in *Acta,* XXI; 209-274.

Chapter II

THE POPE'S ASSISTANTS AT ROME

So numerous are the duties involved in the universal government of the Church that the Roman Pontiff has need of many assistants. Some of these reside at Rome and arc called the cardinals. Others reside outside of Rome and are called papal legates, vicars and prefects Apostolic, administrators Apostolic, archbishops, etc.

First wc shall consider those who assist the Pope at Rome *(in Curia),* i. c., the cardinals.

ART. I.

The Cardinals of the Holy Roman Church

In this article we shall consider cardinals chiefly in themselves. In the next article we shall explain how the cardinals advise the Pope as heads of the various departments of the Roman Curia, and how they govern the Church during the vacancy of the papal office.

Definition—Cardinals are those dignitaries who during the lifetime of the Pope *(sede plena)* are his immediate aides and intimate counsellors, and who upon the death of the Pontiff *(sede vacante)* have the exclusive right to elect a new Pope (c. 230).

§1. Origin of Cardinals

Etymologically cardinal derives from *cardo,* which means a hinge or pivot. As early as the fifth century we find mention of cardinals in the Church. They were those clerics who had received a *permanent* appointment to some church as distinguished from itinerant and temporarily assigned clerics. Upon the former class *of* clerics, rather than upon the latter, was the church conceived as revolving and depending, much as a door is supported on its hinges. Such cardinal clergy were found both at Rome and elsewhere. Hence to distinguish the former from all others it was customary to speak of the cardinals of the Holy Roman Church. 'That qualification,

however, became superfluous after Pius V (1568) decreed that the name of cardinal must be reserved exclusively for the Roman cardinals, although the lengthier expression is still adhered to out of respect for tradition.

By the eighth century the Roman cardinals form three classes: cardinal-bishops, cardinal-priests and cardinal-deacons. All constituted the presbytery of the Bishop of Rome and assisted h;m in liturgical functions at the major Roman Basilicas. The cardinal-bishops were the Ordinaries of the seven suburbicarian secs in the vicinity of Rome, namely: Ostia-Velletri, Porto, Santa Rufina, Albano, Palestrina, Sabina and Frascati. Cardinal-priests were those clerics in priestly orders who had charge ot certain churches of Rome in which the sacraments of baptism and penance were administered, and which for that reason were probably the parish churches of those times, being for some unknown reason called *tituli.* Cardinal-deacons were those deacons assigned to certain districts of Rome called deaconries *(diaconiae)* into which the City had been divided for the more effective supervision of the poor and their needs. Moreover, each deaconry had its hospice and chapel (church).

With the reservation of papal elections to the cardinals in 1179, the dignity of the latter begins to excel that of all other prelates, including bishops, archbishops, primates and patriarchs. Henceforth, cardinals become the chief advisors of the Pope in the government of the universal Church.

Originally all cardinals were bound to reside in Rome, for they were clerics assigned permanently to certain Roman churches with duties which called for residence. But in course of time dispensations were granted from the law of residence so that bishops and archbishops outside of Rome could be created cardinals without the necessity *of* relinquishing their sees to come and live at Rome, their churches at Rome being cared for by vicars. In this way the whole Catholic world is now represented at papal elections and the Pope in turn is constantly advised on the state of the universal Church through his cardinals resident in all parts of the world.

§2. Number and Classes of Cardinals (c. 231)

The Sacred College of Cardinals numbers 70 members as fixed by Sixtus V (1586). This does not mean that temporary vacancies cannot occur in the Sacred College, or that the number can never be more than 70, although as a matter of fact that number has never been exceeded since it was decreed by Pope Sixtus.

The historic triple division of cardinals into three classes remains, 6 members belonging to the order of cardinal-bishop, 50 being cardinal-priests, and 14 cardinal-deacons. But unlike early times this division of *rank* no longer coincides with the hierarchy of *orders*. For while prior to the 13th century every cardinal-bishop was a bishop in orders, every cardinal-priest was a priest in orders and every cardinal-deacon a deacon by ordination and nothing more, today only those cardinals belong to the rank of cardinal-bishops who occupy the six suburbicarian secs. All other residential bishops, who may be cardinals, are cardinal-priests. They arc bishops indeed of their respective dioceses, but only priests of the Roman Sec. Likewise cardinal-deacons arc usually priests in point of orders and sometimes they are even bishops.

Whether a cardinal belongs to one or the other rank in the Sacred College depends upon the church which the Pope assigns to him at his creation. If he receives a suburbicarian diocese, he is a cardinal-bishop; if a titular church in Rome he is a cardinal-priest; if a diaconal church, he is a cardinal-deacon. But a cardinal-deacon may, ten years after his creation, ask that he be promoted to the rank of cardinal-priest, i. e., that he be given a presbyteral church; and the senior among the cardinal-priests may, upon the vacancy of a suburbicarian diocese, ask that he be made a cardinal-bishop, i. e., that he be assigned to some suburbicarian diocese. This is known as the right of option *(jus optionis)* (c. 236).

Cardinal-bishops precede cardinal-priests, and these precede cardinal-deacons. Within the same rank precedence is determined by priority of promotion to the cardinalate.

§3. Creation of Cardinals (c. 232-233)

Cardinals arc chosen by the Roman Pontiff from all parts of the world. In this choice the Pope is dependent neither upon the consent of the other cardinals, nor upon that of the secular rulers. Although before creating new cardinals the Pontiff is wont to ask the Sacred College: *Quid vobis videtur?* this is now considered a mere ceremony devoid of all juridical content.

The qualities required in a cardinal are these:

1) He must be a priest, either secular or religious, eminent in learning, piety and prudence;

2) lie must be born of lawful wedlock, and legitimation by subsequent marriage of the parents will not suffice;

3) He must be free of irregularities, and though he may have

been dispensed from one or more irregularities for promotion to the priesthood, or even to the episcopate, this will not qualify him for the cardinalate;

4) He must not have a child or grandchild (supposing he had entered the priesthood a married man);

5) He must not be related to any living cardinal in the first or second degree of consanguinity, a provision designed to preclude nepotism.

Cardinals are created when their names arc announced in secret consistory (cfr. below what is meant by a consistory). In a private audience shortly thereafter the Pope gives the new cardinals the red *biretta*. 'Then in a public consistory held about three days after the secret consistory, the cardinals receive the red *hat* and swear fidelity to the Pope. On the same day, in a second secret consistory, the Pope closes the lips of the new cardinals at the beginning of the session, signifying thereby that they must abstain from expressing their opinions for the present; he then gives them the cardinal's ring, assigns to each a cardinalitial church in Rome, appoints them to various departments of the Roman Curia if they arc to reside in Rome, and finally opens their lips thus giving them the right to cast a deliberative vote in ecclesiastical affairs, the same as other cardinals.

If at the time of his creation a cardinal is absent from Rome, the Pope through a special envoy, presents him with the red biretta. but the new cardinal must promise upon oath to visit the Pontiff within a year.

Sometimes the Pope creates a new cardinal by declaring this fact in secret consistory, but for some reason known only to himself withholds the name of the candidate, e. g., because of political conditions, or because the cleric has an office which he cannot conveniently resign for the present to come and reside at Rome supposing he is to be a cardinal in Curia. This is called the reservation *in pectore*. The object of the procedure is to accord retroactivity to the creation with the consequent right of the cardinal so created to take precedence over all cardinals subsequently created. But should the Pope die without publishing the name of the cardinal, the *reservatio in pectore* loses all juridical effect.

§4. Titles, Insignia and Privileges of Cardinals (c. 239)

The title of *Eminence* was given to cardinals by Urban VIII (1630). When referring to a cardinal, then, one speaks of *His Eminence,* and when addressing a cardinal one says *Your Eminence*.

The distinctive insignia of cardinals are chiefly: I) the red hat given them by Innocent IV in 1245; and 2) the red (scarlet, crimson, purple) mantle and biretta permitted them by Paul II in 1464. although, if we except the Jesuits, all *religious* cardinals retain the color of their religious garb.

As to the privileges of cardinals the most outstanding is that of precedence. Cardinals rank second only to the Pope in dignity. Even though they lack the episcopal character, they precede all other prelates in the church including bishops, archbishops, primates and patriarchs. This privilege granted them by Eugene IV (1428) rests upon the principle that in every organized society it is jurisdiction (governing authority) rather than any other element which determines rank and precedence. Now, in point of jurisdiction cardinals excel bishops, for the jurisdiction of cardinals being a participation of papal sovereignty extends to the universal Church, whereas that of bishops is restricted to their respective territories. Moreover, bishops are judged by cardinals, not vice-versa.

Cardinals enjoy, in addition, a number of other privileges, a list *of* which, mostly of a liturgical nature, is found in c. 239. Privileges of a juridical character are found scattered throughout the various parts of the Code, e. g., the privilege of being judged by none but the Pope, the privilege of exemption from all ecclesiastical penalties, etc.

§5. Authority of Cardinals (c. 240-241)

Cardinals have a two-fold authority: 1) with respect to their titular churches; 2) with respect to the Church universal.

With respect to their *titular churches* cardinal-bishops have the same authority in their suburbicarian dioceses as other residential bishops. Cardinal-priests and cardinal-deacons at one time possessed a quasi-episcopal jurisdiction over their churches, but at the present time they retain that authority only as regards liturgical matters, e. g., they can, in their churches, exercise the pontificals, impart the episcopal blessing, confer tonsure and minor orders, etc. But in non-liturgical matters, i. e.. in matters purely disciplinary, they have only a paternal or domestic power, i. c., they can lay down rules concerning divine worship in their churches, correct abuses, discipline the clergy, etc., but they cannot punish infractions with ecclesiastical penalties in the strict sense of the word, this being the right of the Cardinal-Vicar of Rome.

In respect to the *Church universal* the authority of cardinals during the occupancy of the papal chair differs from that which they exercise during the vacancy of the Holy Sec. *Sede plena,* the cardinals form the senate, as it were, of the Roman Pontiff, and their jurisdiction is mostly deliberative as we shall sec at greater length in Art. II. *Sede vacante,* cardinals have the exclusive right to elect a new Pope, and so their jurisdiction here is for the most part electoral. During the vacancy, the government of the Church docs not pass to the Sacred College of Cardinals *in toto;* e. g., the cardinals cannot enact new general laws, nor can they revoke existing laws. At the most they can transact only those matters for which they possess ordinary faculties *sede plena.* Should some exceptionally grave and urgent matter call for their examination, a special procedure, outlined in the Constitution *I açante Sede dpostolica* must be followed. For the rest, that Constitution has been so designed as to hasten the election of the new Pope as far as reasonably possible, so that few matters will be found so grave and urgent which cannot await the deliberation and sanction of the new Pontiff.

ART. II.

The Roman Curia

Cardinals counsel the Pope chiefly in their capacity as heads of the various departments of the Roman Curia.

§1. The Roman Curia in General

Etymologically curia is derived from *cura.* It denotes the care with which public affairs should be administered. Borrowed from the Roman Law, the word came to mean, in the church, the presbytery or that body of clerics who assisted the bishop in the government of the diocese.

Like all other bishops, the Pope had his presbytery whom he consulted in the more difficult matters of local administration. It seems to have included all the Roman clergy. This was the original papal curia.

With the gradual recognition of the Papal Primacy the government of the Church became more and more centralized at Rome. Recourse to the Pope from all parts of the Catholic world began to increase, whether for privileges, dispensations, interpretations of the

law, or as appeals from adverse decisions of local authorities. Thenceforth, the Popes judged it more appropriate to turn to the cardinals alone as to their chief advisers. .About the 12th century the Roman Curia no longer meant Roman presbytery but the consistory of cardinals.

A consistor}' *(consedere)* is a gathering of the cardinals in the presence *of* the Pontiff. From the beginning these consistories were held three times a week for the transaction of business that concerned the whole Church. It was soon discovered, however, that all questions and matters could not be taken care of in this way. Special offices, then, were created for the drafting *of* documents, notably the Apostolic Chancery. Litigated matters could not be decided without first hearing the parties and gathering evidence, which function came to be reserved to the auditors of the Roman Rota. Even purely administrative business became too complex to be settled only three times a week. Wherefore, Sixtus V in 1587 divided the entire mass of administrative business among various committees of cardinals. Thereafter, consistories became daily less frequent, and at the present time they are held only when the Pope chooses to convene them, usually at intervals of several months.

Consistories arc secret, semi-public, and public. In the *secret* consistories, so-called because only the cardinals are present, the Pope creates new cardinals and bishops, erects new dioceses and provinces, and renders allocutions on grave current problems confronting the Church. At *semi-public* consistories both bishops and cardinals vote on cases of beatification and canonization, this being, of course but a consultive vote. *Public* consistories are purely ceremonial occasions attended not only by cardinals and bishops, hut by the papal diplomatic corps, and other distinguished and privileged persons. At these the Pope confers the cardinal's hat, or solemnly decrees a canonization, or grants a formal reception to sovereigns and their ambassadors.

Origin of Curia in its present form—The Roman Curia's present structure as consisting of Congregations, Tribunals and Offices, owes its origin to Sixtus V in the 16th century. Already under the consistory system there had existed special Offices and Tribunals, namely the Apostolic Chancery, the S. Penitentiary and the Roman *Rota,* as organs distinct from the consistory, for the drafting of documents, and the exercise of judicial jurisdiction. Thus, in time there remained only administrative matters to be transacted in consistory. When even these became too numerous and complex to be examined only three times a week in consistory, Sixtus V by

his Constitution *Immensa,* Jan. 22, 1587 distributed the entire mass of administrative business among 15 Congregations, or committees, of cardinals. He thereby became the founder of the Roman Curia in its present form as consisting of Congregations, Tribunals and Offices.

Reform of the Curia—During the centuries which followed, the Curia underwent substantial changes. The *Rota's* jurisdiction was restricted to civil law disputes arising within the papal states, while its contentious jurisdiction in matters ecclesiastical was taken over by various Congregations, so that the latter became both administrative and judicial organs. Moreover, the administrative jurisdiction of the Congregations and Offices frequently overlapped. Therefore, Pius X, by his Constitution *Sapienti consilio* (June 29, 1908), reformed the Curia in its entirety, reestablishing the *Rota* as a court for ecclesiastical cases, assigning only administrative authority to rhe Congregations, and accurately defining the jurisdiction of each Congregation and Office, so that no longer would authority in two or more organs be duplicated. The Constitution *Sapienti consilio* was supplemented by two other documents: *Lex propria S. Romanae Rotae et Signaturae Apostolicae,* and the *Ordo servandus in Sacris Congregationibus, Tribunalibus et Officiis Curiae Romanae.* The Code has introduced but a few changes in the Curia as thus reformed.

We shall speak in turn of: 1) The Congregations; 2) the Tribunals of the Roman Curia, and 3) The Offices of the Roman Curia.

§2. The Roman Curia in Particular

A. The Sacred Congregations

(1) *The Congregations in General*

Definition—The Sacred (Roman) Congregations may be defined as standing committees of cardinals to whom the transaction of certain ecclesiastical matters has been assigned permanently by the Roman Pontiff. '1'here are 11 Congregations and each has competency over a definite category of matters.

The number of cardinals who form any given Congregation depends upon the will of the Pope. Although in addition to cardinals other prelates compose the personnel of the Congregations, such as major and minor officials, consultors, agents, lawyers, etc., it is essentially the cardinals who are the Congregations, for they alone constitute the deciding board, and saving the authority of the Pope, they have the final word in all questions which come up for consider-

ation. It is through such deliberations that the cardinals are said to aid and advise the Pope.

Functions of the Congregations—Being the administrative departments of the Holy Sec the functions of the Congregations are: 1) to sec to the enforcement of the common law through timely decrees and instructions; 2) to grant favors, privileges and dispensations from the law; 3) to issue general and particular interpretations of the law; 4) to decide controversies between litigating parties in an administrative way, *{via administrativa, disciplinari, oeconomica),* their findings being called *decisions,* not sentences (c. 243, §1).

Wherefore, against the decrees of the Ordinary, whether these take the form of precepts, prohibitions (injunctions), appointments, removals, penalties, etc. an aggrieved party does not *appeal* to the archbishop, or to the Rota, hut he has *recourse* to the competent Congregation. The reason is that a decree is an *administrative* act, not a judicial one, and as such it can be reviewed only by a higher administrative organ. It is only when the Ordinary cither in person or through his representative, e. g., the diocesan Official, decides a matter by way of the formal trial outlined in Part 1, Book IV of the Code, i. e., when he acts in the capacity of judge and not in the capacity of administrator, that appeal is taken from his *sentence* to a higher *judicial* organ, i. c., to the archbishop's court in the second instance, and to the *Rota* in the third instance (c. 1601).

How the Congregations proceed—Of the cardinals who compose any one Congregation, one is the supreme moderator. He is called the cardinal-prefect except in three Congregations where the Pope himself is prefect, namely, the Holy Office, the Consistorial Congregation and the Congregation for the Oriental Church. Here the presiding cardinal is called the cardinal-secretary.

The presiding cardinal is more immediately assisted by certain non-cardinal prelates, i. e., the major officials who are usually called the secretary and sub-secretaries. But where the presiding cardinal is himself the secretary as explained in the preceding paragraph, the first assistant is called the assessor.

Ordinary matters, e. g., dispensations of minor moment, are seen to by the presiding cardinal. More difficult matters are deliberated in the *Congresso,* i. e., a meeting of the cardinal-prefect and his major officials. To the *Congresso* also it belongs to prepare the agenda for the full committee. The Full Congregation *{Congregatio plena)* is a meeting of all the cardinals assigned to the Congregation, who by majority vote decide questions which are beyond the competence of the *Congresso.* Such matters arc. e. g., administrative interpretations of the law concerning doubts submitted by some

Ordinary, decisions in more difficult litigated controversies, the granting of unusual favors, the enactment of general decrees and instructions, etc (c. 244).

The Congregations represent the Pope and act by his authority. In certain matters they receive ordinary faculties, and then their jurisdiction is ordinary, though vicarious. For all other matters the Pope must be first consulted. In the first case the rescript will read: *vigore facultatum a Domino nostro tributarum;* in the second case: *facto verbo cum Sanctissimo.*

Force of the Congregations' acts— Authentic (administrative) interpretations given by the Congregations may be general in nature or particular. The former are called *decrees,* or *declarations,* the latter *rescripts.* General interpretations bind universally; particular interpretations constitute law only for the parties whom they concern. If, later, these are inserted in the *Acta AP. Sedis,* and all mention of the diocese, or the religion to which they were originally directed is omitted, they must be construed as general interpretations. Otherwise, their mere insertion in the *Acta* accords to them no such universal value, hut the decisions serve only as directive norms for Ordinaries, and other superiors, in similar cases.

Decisions in the strict sense of the word by which litigations are settled, e. g., between two beneficiaries, likewise constitute law only for the interested parties. Where the same decision is repeatedly issued, it will, in time, form the style and practice of the Roman Curia, from which it would be rash to depart in the same set of circumstances contemplated by the decisions.

Against the administrative decisions of the Congregations the aggrieved party cannot appeal to the *Kota,* since one never appeals from a decree but only from a sentence; nor does one invoke the authority of a judicial organ to review the acts *of* an administrative organ. Hence, strictly speaking, there lies neither appeal nor recourse from the decisions of the Congregations, not even to the Pope. The reason is that either the Pope ratified the decision, or if not, that the Congregation, using ordinary faculties given them by the Pope, acted in his name, and in so doing they constituted one person with the Pontiff. However, one may ask for a *beneficium novae audientiae,* and whether this new hearing will be granted him depends upon the circumstances of the particular case, e. g., whether substantial arguments have been overlooked, whether new evidence is at hand, etc.

The doctrinal decrees of the Holy Office are not infallible, but they are binding none the less. They call for a reverential assent of the mind, which assent must be both internal and external.

as dogmatic theology explains more at length. One who rashly denies such doctrinal decisions, while he may not incur the censure of heresy, is considered *proximus haeresi.*

How the Congregations are approached—Any member of the Church is free to communicate directly with the Congregations, either personally or by letter. But saving litigations, and cases which belong to the S. Penitentiary, a private individual does best to invoke the aid of his Ordinary. The reason is that the Holy See is not wont to grant favors today unless the petition carries the Ordinary's endorsement. Moreover, the Ordinary is usually appointed the executor of the rescript.

Wherefore, religious organizations of men must have a procurator general (a man of their own community) resident at Rome, who transacts all affairs of his religion with the Holy See. Religious communities of women deal with the Holy See either through the local Ordinary, or through their Cardinal-Protector. Secular clerics and laymen deal with Rome through their proper local Ordinaries.

Petitions addressed to the Holy See may be written in any language, although Latin, Italian and French are preferred, for unless the officials assigned to the particular Congregation are familiar with the language employed, delays in finding a competent translator must be expected.

No set form of words is prescribed in drawing up a petition. It suffices to state one's case in clear and simple diction. The petitioner should add his name and address, and the name of his diocese. For petitions directed to the S. Penitentiary, cfr. p. 213.

While the petition itself is addressed to the Holy Father, the envelope which contains the petition is addressed to the Roman Curia, either to the presiding cardinal, or to the Congregation competent in the matter of which he is head. The address of the Holy Office, and of the S. Penitentiary is: Palazzo del S. Uffizio, Piazza S. Uffizio, Rome, Italy. That of the Congregation for the Oriental Church, the Ceremonial Congregation, the Congregation for Extraordinary Affairs, the Apostolic Camera, the Secretariate of State is: Vatican Palace, Città del Vaticano (Vatican City). That of the Propaganda: Palazzo di Propaganda Fide, Piazza di Spagna, Rome. That of the Signatura, of the Rota, and of the Datary is: Palazzo della Dataria, Via della Dataria, Rome. That of all Congregations save those already mentioned is: Palazzo delle Congregazioni; Piazza S. Callisto, Rome. There remains only the Apostolic Chancery housed in its ancient building at Piazza della Cancelleria, Rome. *Note*—Communications to any Congregation, Office or Tribunal can also be sent simply to *Fafican City.*

(2) *The Congregations in Particular*

1. *The Congregation of the Holy Office* (c. 247)—Instituted by Paul III in 1542, as an agency for defending the Catholic Faith against Protestant errors (truly a holy office), this Congregation until 1908 went under the title of *The Roman and Universal Inquisition.*

It is competent in all matters that concern faith and morals. It judges all crimes involving heresy, or the suspicion of heresy. To this extent it is a tribunal and has its own rules of procedure. In other respects it is a Congregation, and proceeds administratively.

It is also competent, and exclusively so, in all questions that relate to the Pauline Privilege, and the impediments of mix^i religion and disparity of cult. It alone grants dispensations from these impediments. It alone tries marriage cases brought to Rome in any instant of hearing, if one party to the contested marriage is a non-Catholic (H.O., Jan. 27, 1928; *Acta* XX, 75).

It belongs to the Holy Office to prohibit books, and to place them on the Index. It also grants the necessary permission to read such books. Prior to 1917 this function had been reserved to the Congregation of the Index. In that year the latter was suppressed by Benedict XV.

The Holy Office alone grants dispensations from the Eucharistic fast for priests who wish to celebrate Mass without fasting. If anyone wishes for good reason to communicate habitually without fasting, e. g., for reasons of illness, the Congregation of the Sacraments is competent, and for religious the Cong, of Religious.

2. *Consistorial Congregation* (c. 248)—Founded by Sixtus V in 1588 this Congr. as its name indicates prepares the agenda for consistories. It secs to the appointment of fit candidates to vacant secs, examines quinquennial reports of bishops, and hands over to the Congr. competent in the matter any reports which seem to call for disciplinary correction in the form of decrees or instructions.

This competency of the Consistorial Congr. is taken over by the Congr. of the Propagation of the Faith for missionary countries, e. g., as concerns the appointment of vicars and prefects Apostolic, the examination of their reports, etc.

3. *Congregation of the Sacraments* (c. 249)—Founded by Pope Pius X in 1908 this Congregation has charge of the universal discipline concerning the sacraments, a jurisdiction which formerly had been distributed among a number of Congregations and Offices.

hatever concerns the sacraments or the Mass, saving the jurisdiction of the C. of Rites on points of rubrics, belongs to the C. of the Sacraments. It grants dispensations in this connection, e.g., marriage dispensations, dispensations for orders; it enacts legislation to correct abuses in the administration of the sacraments and the celebration of Mass; it alone judges concerning the obligations attaching to major orders, and the validity of such orders in particular cases, although if the matter is too involved it may remand the case to some competent tribunal to be examined by way of a formal trial; it alone administratively examines *ratum et non-lonsummatum* cases, and grants dispensations in this matter, unless the case being too involved, it should decide to hand it over to some competent tribunal for judgment by way of a formal trial.

But the Holy Office alone is competent to dispense *celebrants,* whether religious or secular, from the eucharistie fast; to examine *ratum et non-consummatuni* cases where a non-Catholic is involved; to try ordination cases arising from defect of rites.

4. *Congregation of the Council* (c. 250)—As its name implies this Congregation was instituted to enforce the decrees of the Council of Trent. With the reform of the Curia by Pius X (190S). its function in this respect was divided among the various other Congregations so far as concerns matters belonging to the province of each.

At present the C. of the Council supervises the universal discipline of the secular clergy and the laity, enacting general decrees in this respect and granting appropriate dispensations and induits, c. g., from fast and abstinence, the observance of holydays, etc.

It has charge of whatever concerns pastors, canons, confraternities and other pious unions, even though these are found in the churches of religious and depend upon religious superiors.

It has jurisdiction over pious legacies, pious works. Mass stipends, benefices, ecclesiastical offices, church goods, and property, diocesan assessments and taxes, and ecclesiastical immunities, e. g.. if permission is sought to sue a cleric in the civil court where such permission must be obtained from Rome.

This Congregation also examines and approves the acts and decrees of plenary and provincial councils.

It is to this Congregation that an aggrieved secular cleric or a layman has recourse; religious take recourse to the C. of Religious. Secular clerics and laymen in countries subject to the Propaganda have recourse to the Congregation of the Propagation of the Faith.

5. *Congregation of Religious* (c. 251)—Sixtus V instituted

two Congregations, one for the affairs of religious, the other for the affairs of bishops. In 1601 both were fused into one Congregation under the title of the *Congregation of Bishops and Regulars.* In 1908 Pius X suppressed the Congregation and assigned the affairs of religious to the new *Congregatio negotiis religiosorum sodalium praeposita,* transferring to the C. of the Council jurisdiction over the affairs of bishops.

To the Congregation of Religious belong all questions which relate to religious either as individuals or as bodies, namely, their government, discipline, studies, temporal goods, privileges, etc.

This Congregation is exclusively competent in all controversies wherein a religious is either plaintiff or defendant, although if the other party is a non-religious, the Congregation has the right to remand the case to some other Congregation if this seems expedient.

The C. of Religious has jurisdiction over Third Orders Secular, and over those organizations of men or women who live a life in common without vows, e. g., the Oratorinns.

All dispensations requested by religious are granted by this Congregation, saving the competency of the H. O. to dispense religious celebrants from the Eucharistic fast.

6. *Congregation of the Propagation of the Faith* (c. 252)—Sometimes called the Congregation of the Propaganda, or simply The Propaganda, this Congregation was instituted by Gregory XV in 1622 to strive for the return of heretics and schismatics to the Church. Its jurisdiction was later enlarged to propagate the faith among infidels in missionary countries. Pius X in 1908 withdrew from its jurisdiction the following countries and subjected them to the common law: England, Scotland, Ireland. Canada, Nova Scotia and the United States.

In general this Congregation has the duty of fostering the Catholic religion in missionary countries, i. c., in those countries where the hierarchy has not yet been established, or restored, or if established or restored, has not attained such perfection as to warrant its subjection to the common law.

For such countries the Congregation of the Propagation of the Faith possesses the totality of jurisdiction enjoyed by all the other Congregations combined, saving 4 exceptions: 1) doctrinal matters belong to the Holy Office; 2) marriage cases belong to the respective Congregations of the Holy Office and the C. of Sacraments; 3) religious as missionaries are subject to the Propaganda, but as religious they are subject to the C. of Religious; 4) Orientals are subject to the C. for the Oriental Church.

7. *Congregation of Sacred Rites* (c. 253)—Instituted by Sixtus

V, this Congregation in 1908 took over, in addition to its original duties of safeguarding rubrics, that of the Congregation of Indulgences and Relics, so far as relics arc concerned. Jurisdiction over indulgences was given to the S. Penitentiary, and the Congregation of Indulgences and Relics was suppressed.

The Congregation *of* Rites enforces the liturgical laws of the Latin rite. To this end it enacts general decrees and instructions, issues interpretations, and grants privileges, induits and dispensations, e. g., the induit of the privileged altar, of a private oratory, of a portable altar, dispensations to celebrate black Masses on otherwise prohibited days, etc.

Moreover, it has exclusive competency in cases of beatification and canonization, and proceeds in this respect more like a court than an administrative organ, following the rules of procedure outlined in Part II, Book IV of the Code.

8. *The Ceremonial Congregation* (c. 254)—Founded by Sixtus V, it has authority to regulate and supervise the sacred functions of the papal chapel, and all functions performed by cardinals outside of the papal chapel.

Moreover, it has charge of the ceremonies prescribed at the papal court, e. g., in the reception of diplomats.

Finally, it decides all controversies concerning precedence among cardinals, as also among legates accredited to the Holy Sec from the various nations.

9. *Congregation for Extraordinary Ecclesiastical Affairs* (c. 255)—After the disturbances brought about by the French Revolution, Pius VI in 1793 created a temporary committee for The Extraordinary Affairs of the Church in France. Pius VII (1814) enlarged its scope to embrace all matters of grave moment in which relations of Church and State were involved, making it at the same time a permanent Congregation, and giving it its present general name.

The competency of this Congregation extends to all matters which involve Church and State. Hence, it draws up concordats, erects and divides dioceses whenever the civil authorities must be consulted, and appoints fit candidates to such dioceses. Furthermore, it studies cases assigned it by the Pope involving civil legislation and other civil acts which endanger the liberty, or otherwise concern the interests, of the Church.

10. *The Congregation of Seminaries and Universities* (c. 256)—Sixtus V instituted the Congregation for the Roman University, but at the same time charged it with the supervision of all other

pontifical universities, e. g., the University of Bologna, Paris, etc. Benedict XV gave to this Congregation jurisdiction with regard to seminaries, an authority which until that time (1915) had belonged to the Consistorial Congregation.

'This Congregation watches over all that pertains to the government, discipline, temporal administration, and studies of seminaries, saving the competency of the Propaganda. It alone, moreover approves of new pontifical universities and faculties, sanctions their statutes, grants them authority to confer degrees, and may itself confer degrees upon any man of exceptional learning.

11. *Congregation for the Oriental Church* (c. 257)—This Congregation, created by Benedict XV, previously had formed a section of the S. C. of the Propagation of the Faith.

Its competency is personal, extending to all matters which affect Catholics of the (Uniate) Oriental Rites.· It possesses the totality of all jurisdiction possessed by all other Congregations, saving the competency of the H. Office, and of the S. Penitentiary (S. C. Orient. July 26, 1930; *Jeta* XXII, 394).

The Congregation is exclusively competent in questions which simultaneously involve a Catholic of the Latin and of an Oriental Rite, e. g., to grant dispensations for such marriages in the event of an impediment.

The Congregation proceeds administratively, but cases which appear too complex it remands to some tribunal for examination by way of a formal trial.

In virtue of the Motu proprio issued Mar. 25, 1938, Pius XI gave the Oriental Congregation competency likewise over Catholics of the Latin Rite in the following regions: Egypt, Cyprus, Greece, Dodecanese, Iran, Iraq, Lebanon, Palestine, Syria, Transjordania, Asiatic Turkey and that part of Thrace which is subject to Turkey. But the jurisdiction of the H. Office, S. C. of the Sacr., S. C. of Rites, S. C. of Seminaries and Univ., and of the S. Penitentiary remains intact *(Jeta* XXX, 154).

Note—The principles governing the competency of the various Congregations are not always clear in practise. Accordingly, c. 245 provides that should doubts arise in this matter, such controversies arc to be decided by a special committee of cardinals appointed by the Pope in each case. Since the promulgation of the Code the following answers have been issued:

1) Decisions regarding the obligations attaching to major orders, and the validity of sacred ordination in the case of a religious, belong to the C. of the Sacraments and not to the C. of Religious. (Dec. 7, 1922 *Jeta* XV, 39).

2) The C. of the Council and not the Consistorial Congregation is competent in questions concerning: 1) priests as students or teachers in lay schools; 2) associations of the laity and their federations. On the other hand, the Consistorial Congregation and not the C. of the Council is competent concerning: 1) the erection and suppression of chapter dignities; 2) revenues and goods belonging to the episcopal *rnensa* (Dec. 7, 1922; *Acta* XV, 39).

3) All questions or recourses *(instantiae)* affecting the rights or interests of religious as individuals or as a body belong exclusively to the C. of Religious. Hence to it and not to the C. of the Council does it belong to grant *sanationes, condonationes* and *reductiones* in reference to chaplaincies and legacies found in the churches of religious, even though not entrusted to the religious in their substance but only as to their administration and fulfillment, but only to the extent that these *sanationes,* etc. involve administration and fulfillment. The C. of Religious alone grants religious candidates dispensations in the matter of sacred ordination, e. g., from age. studies, etc. The same Congregation dispenses religious who because of sickness or other causes request dispensations relating to the celebration of Mass (.Mar. *24,* 1919; ./,-m XI, 251).

4) The C. of Seminaries and Universities, and not the C. of the Council, may grant permission to alienate property belonging to diocesan seminaries (Dec. 7, 1922; *Acta* XV, 39).

Finally, let it be added that should a petition be sent mistakenly to the wrong Congregation, it will be remanded by the same to the competent Congregation, although such mistakes naturally delay an answer.

B. Tribunals of the Roman Curia

The Tribunals are the judicial departments of the Holy See. They are three: 1) the Sacred Penitentiary; 2) the Roman Rota; 3) the Signatura Apostolic. Here, too, the cardinals figure as the counsellors of the Pope, if we except the Rota whose judges are prelates *(monsignori),* and whose sentences need not the approval of the Pope. The S. Penitentiary deals exclusively with matters of the *internal* forum, the other two tribunals exclusively with matters of the *external* forum.

1. *The Sacred Penitentiary* (c. 258)—This is a tribunal of mercy, and as its name implies, deals for the most part with penitents. It is not a Congregation, for the reason that but one cardinal, not a number pf cardinals *(congregatio)* is assigned to it. Its chief, though not exclusive, function is to hear and pardon penitents, hence, it is a tribunal above all.

As a distinct organ of the Roman Curia the S. Penitentiary dates from the 13th century, when, due to the increasing number of sins and censures which the Pontiffs reserved to themselves for judgment, penitents from all parts of Christendom began to have recourse to Rome for pardon. It was gradually developed in its organization to include besides the Cardinal Major Penitentiary, and a number of minor confessors (penitentiaries), certain non-cardinal officials, e. g., the regent, theologian, canonist, etc.

The S. Penitentiary not only absolves, and grants faculties to absolve, from reserved sins and censures which are occult, but its jurisdiction covers the entire field of the internal forum, both sacramental and extra-sacramental, provided the case is occult, t. e., provided only the relief of conscience is sought. For, if the matter is public, it must go for cognizance to one of the Congregations or Tribunals.

Wherefore, in occult cases the S. Penitentiary grants favors of ever}' kind: 1) *absolution* from all sins and censures reserved to the Holy See; 2) *dispensations* from vows, oaths, irregularities and marriage impediments; 3) ratifications *(sanationes)* for invalid acts, e. g., invalid marriages, invalid appointment to offices, etc.; 4) *commutations* of vows, fasts, and obligations of every kind; 5) *condonations* of illegally acquired ecclesiastical goods; 6) *reductions* of obligations which are difficult of fulfillment, e. g., Mass obligations due to the devaluation of a country's currency.

This tribunal, moreover, settles doubts *of* conscience when they are submitted to it.

Finally, this Tribunal has jurisdiction over indulgences, their grant, use, etc.

The S. Penitentiary admits petitions in any language. If a confessor applies to the S. Penitentiary for his penitent, and the subject matter does not permit the revelation of the penitent's name without infamy, fictitious names must be employed for the penitent e. g., *Titius,* or *Titia.* But the confessor must give his own name and address, or some other name and address to which the answer should be forwarded. For the rest, direct recourse to the S. Penitentiary is not so necessary as one might suppose, because our Ordinaries have ample faculties, either ordinary or delegated, to deal with the cases which frequently occur.

2. *The Roman Rota* (c. 259)—This tribunal exercises jurisdiction for the external forum of a contentious nature. It is the ordinary supreme court of the Church. In a few cases it is a court of first instance. At the present day marriage cases occupy most

of its attention. More will be said of the Rota and the Signatura in Book IV of our manual.

3. *The Apostolic Signatura* (c. 259)—This court is composed of cardinals only, whose function it is to hear exceptions brought by parties to a trial against the judges (auditors) of the Rota.

C. Offices of the Roman Curia

The Roman Offices are the ministerial departments of the Holy Sec. They arc charged primarily with the drafting and forwarding of Apostolic Letters, although some enjoy a measure of administrative jurisdiction as well. The supreme moderator in each office is a cardinal, so that even in these departments the cardinals aid and counsel the Pope.

1. *The Apostolic Chancery* (c. 260)—This Office may be considered coeval with the Roman Church itself, although only from the 13th century does its organization resemble that of the present day. In course of time all the other Offices of which we shall speak were formed into separate and independent organs, having originally formed so many different sections of the Chancery.

Today the function of the Apostolic Chancery is reduced to the drafting and forwarding of papal bulls, e. g., documents containing appointments to vacant dioceses, the erection of new dioceses and provinces, etc. It also draws up other papal letters which deal with exceptionally grave matters. But it can issue neither bulls nor Apostolic Letters save by instruction of the Consistorial Congregation, or the Pontiff, depending upon the content of the particular document in question.

2. *The Apostolic Datary* (c. 261)—As the name indicates, this Office originally had the duty of affixing the date to documents issued by the Chancery (the word being derived from *datare,* not *dare).* When it became an independent Office in the 15th century it began also to grant the very favors which certain documents carrying its date contained.

At the present day the Apostolic Datary dates only those documents which emanate from that Office, its functions now being: 1) to issue Letters for the conferment of reserved non-consistorial benefices, a list of which is found in c. 1435; 2) to examine the fitness of candidates for said benefices; 3) to care for pensions and burdens which the Pope may have imposed in the conferment of those benefices.

3. *The Apostolic Camera* (c. 262)—This Office cares for the temporalities of the Holy See. During the vacancy of the papal chair

it regulates whatever pertains to the conclave. The presiding officer is called the Cardinal Camerlengo of the Holy Roman Church.

4. *The Secretariate* 0/ *State* (c. 263)—The presiding cardinal in this Office is the Cardinal Secretary of State. He is the Minister of Foreign Affairs, as it were, and since his duties are of the most confidential nature his office ceases upon the death of the Pope.

This office is divided into three sections; the *first* section transmits to the C. for Extraordinary Ecclesiastical Affairs those matters which the Pope has ordered to be examined by that Congregation, and therefore, it has as its president the secretary of that congregation; the *second* section concerns itself with ordinary matters of papal diplomacy, and its presiding officer is called the Substitute; the *third* section drafts and dispatches Apostolic Briefs for matters submitted to it by the competent Congregations, saving the Briefs addressed to secular rulers for which a special Office exists.

It is the function of the Secretariate of State to direct all diplomatic relations between the Holy See and civil governments; to instruct papal legates and examine their reports; to confer papal distinctions, c. g., that of the Order of St. Gregory, of the Knight of Cape and Sword, honorary prelacies, etc.; to transmit papal blessings, and to answer the numerous messages of loyalty, congratulations, etc. which the Pope receives constantly from all parts of the world.

5. *The Secretariate of Briefs to Princes and of Latin Letters*—The duties of this Office arc: 1) to write and forward Apostolic Briefs to secular rulers and persons of high rank; 2) to compose papal letters less solemn in form than Briefs; 3) to prepare papal allocutions and encyclicals. Its presiding officer is the Cardinal Secretary of State (c. 264).

Chapter III

THE POPE'S ASSISTANTS OUTSIDE OF ROME

Christ, the Lord, placed the Roman Pontiff over all nations to be their supreme shepherd. But since it is not possible for the Pope to traverse the whole world, and to discharge this pastoral duty in person, he has need of assistants who, residing in various parts of the world, share his supreme power and office in the care and feeding of the portion of the llock assigned to them.

We have spoken of the Pope's assistants at Rome, or *in curia,* i. e., the cardinals. It remains in this chapter to speak of his assistants outside of Rome, or *extra curiam.* These exercise that jurisdiction which the sovereign Pontiff would himself exercise were he present in person. They arc: papal legates, patriarchs, primates, archbishops, vicars and prefects Apostolic, administrators Apostolic, inferior prelates, and councils.

ART. I.

Papal Legates
(c. 265-270)

Definition—A papal legate (from *legare,* to send) is a cleric sent by the Roman Pontiff to some province or nation with the ordinary power to transact certain affairs inherent in the Apostolic office.

'I'he right of the Pope to send envoys to all parts of the world results from his primacy of jurisdiction in the universal Church.

Legates classified—There arc four classes of legates: 1) legates *a latere;* 2) nuncios; 3) internuncios; 4) Apostolic delegates.

A legate *a latere,* as the word itself implies, is a cardinal sent by the sovereign Pontiff with that title *(a latere)* to represent him as an *alter ego,* sent from his very *side* as a most familiar intimate, but who has only that amount of authority that the Pope chooses to give him. These envoys are cardinals without exception. It is appropriate that they be called *a latere* in another sense since cardinals in Curia

arc always at the side of the Pontiff, as it were. Legates *a latere* are sent upon missions of a very delicate and serious nature. In the early Church they represented the Pope at ecumenical councils. Leo X sent such a legate to receive the abjuration of Luther. Pius VII sent Cardinal Caprara to France to arrange a concordat with Napoleon. But legates *a latere* may have an honorary mission, namely, to represent the Pope at solemn celebrations, e. g., at the coronation of a king, a Eucharistic Congress, etc. 'I'he mission of a legate *a latere,* unlike that of other legates is always transient in nature, and when the affair is transacted, his legateship ceases.

Nuncios and internuncios are sent to countries which have diplomatic relations with the Holy See. 'I'he ordinary jurisdiction of both is the same: 1) to foster friendly relations between the civil government and the Holy Sec, in which capacity they may be called ambassadors in the same sense as the envoys of civil sovereigns; 2) to watch over the condition of the Church in their territory and to inform the Pope (the Secretariate of State) concerning the same. In addition they have delegated faculties, a list of which is found at the end of this manual. Of the 35 nunciatures of the present day 4 arc major nunciatures, or, nunciatures of the first class, namely, those of Paris, Vienna, Madrid and Lisbon. After a nuncio completes his term at these courts, he invariably becomes a cardinal. All others arc nunciatures of the second class.

Apostolic delegates in the *broad* sense are all ecclesiastics entrusted with jurisdiction by the Holy See, e.g., local Ordinaries with respect to their quinquennial faculties, a delegated judge, a confessor with faculties from the S. Penitentiary, etc. But in the *strict* and technical sense, as here understood, Apostolic delegates are prelates sent by the Roman Pontiff to countries which do not maintain diplomatic relations with the Holy See and whose one ordinary function is to watch over the condition of the Church in their territory and to inform the Roman Pontiff thereof. In addition they have delegated faculties more extensive than the quinquennial faculties of the local Ordinaries (cfr. p. 736).

Relation of legates to local Ordinaries—Papal legates must leave the local Ordinaries *free* in the exercise of their jurisdiction. Their functions are purely those of inspection and surveillance. Should abuses arise, they may call the Ordinary's attention to the same, but they cannot directly remedy such abuses by issuing commands and threatening penalties. At the most, if their warning goes unheeded, they must report the matter to the Holy See.

Precedence—Legates are usually titular archbishops, except

legates *a latere,* who are cardinals. Though a legate may lack the episcopal character, he nevertheless precedes all other prelates and dignitaries of his territory, saving cardinals. A cardinal legate *a latere* precedes all other cardinals.

Legati nati—There exists a fifth class of legates called *legati nati,* although this is now merely a title of honor. From the earliest times the Popes were represented in .all parts of the Church by their Vicars Apostolic (not to be confused with the Vicar Apostolic of the present day of which more in Art. III). Thus, at the Court of Constantinople the papal vicars were called *responsales,* whose duty it was to exchange answers between the Pontiff and the Eastern Roman Emperor. More often these Apostolic vicars were residential bishops. Gradually the functions and prerogatives of Apostolic vicars became attached permanently to certain sees, and the incumbents came to be called *legati nati.* Out of this institution arose the primates of the 11th century (cfr. *infra).* These so often abused their authority, that the Popes found it necessary to suppress this office. From the 16th century they are definitely replaced by the *legati must* of the present day.

ART. II.

Patriarchs, Primates and Archbishops

While all bishops arc equal in rank so far as concerns the power of orders, not all are equal as concerns jurisdiction. By divine law only the Pope is superior to other bishops in ruling authority. However, he may share his authority with certain other bishops, and to that extent these bishops acquire supra-episcopal jurisdiction in virtue of ecclesiastical law. This happens in the case of patriarchs, primates and archbishops.

We have seen that papal legates assist the Pope, for the most part, in a supervisory capacity. The authority of patriarchs, primates and archbishops, on the other hand, is more direct. Insofar as these govern their own sees as residential bishops they exercise an ordinary jurisdiction which is original; insofar as they act in the capacity of patriarch, primate or archbishop, their jurisdiction extends beyond their own residential see, becoming in this case vicarious, although still ordinary. The reason is that such authority being supra-episcopal can be conferred only by the Pope in whose name it is exercised.

§1. Patriarchs

. (c.271)

Next in rank to papal legates come patriarchs. Greek in origin, the word signifies the head of a family, tribe or race.

By the fifth century we find the word indicative also of a sacred rank in the Church. The title was reserved to the occupants of five sees: Rome, Alexandria, Antioch, Jerusalem, and Constantinople. The patriarchs exercised jurisdiction over the archbishops in their territory, or patriarchate, much as the archbishops in turn ruled over their suffragan bishops. They could confirm the election of archbishops. consecrate them, depose them, receive appeals from their tribunals, and convene councils of all the archbishops under them. They arc known as the five major patriarchs to distinguish them from minor patriarchs who later cainç into existence.

Minor patriarchs are of two classes: Oriental and Latin patriarchs. The former are six in number: 1) the Melchite patriarch: 2) the Syrian patriarch; 3) the Maronite patriarch; 4) the Coptic patriarch; 5) the Armenian patriarch; 6) the Chaldean patriarch. Ail are subject to the Congregation for the Oriental Church, being clerics of the Oriental Rite. They date their existence in the Roman Catholic Church from the 16th century when, with the return of many schismatics to the fold, the Roman Pontiff gave each of Ihe above rites their own patriarch together with real patriarchal jurisdiction described above as characteristic of the primitive five patriarchs.

The minor Latin patriarchs, who have enjoyed this title for centuries by papal induit are: I) the archbishop (patriarch) of Venice; 2) the archbishop of Toledo in Spain (patriarch of the West Indies); 3) the archbishop of Lisbon; 4) the archbishop of Goa in India (patriarch of the East Indies). And lest their memory perish, the Holy See has been wont to bestow the title of patriarch on four other prelates of the Latin rite, although they represent the four major Eastern patriarchates of old which became extinct in virtue of the disorganization resulting from the Moslem conquest, or through the lapse of the Catholics of those countries into schism. Hence, in addition to the four Latin patriarchs just described, we have Latin patriarchs of Alexandria, Antioch, Jerusalem and Constantinople. We say, *Latin* patriarchs, because they are ecclesiastics of the Latin rite (titular archbishops) with residence at Rome, excepting the patriarch of Jerusalem.

Of Latin patriarchs only three exercise real patriarchal authority: 1) the Roman Pontiff whose patriarchal prerogatives, however,

arc absorbed and overshadowed by the more exalted jurisdiction of the primacy; 2) the Archbishop of Goa; 3) the patriarch of Jerusalem, who lives at Jerusalem and exercises authority over Catholics of the Latin rite resident in Palestine and Cyprus, The other Latin patriarchs have only the honorary title of patriarch, and the right of precedence, but no patriarchal jurisdiction.

§2. Primates
(c. 271)

Next in rank to patriarchs come primates. This dignity, once an office, arose out of the institution of the *legati nati,* as we said. As the East had its patriarchs, the West had its primates. These generally had authority over an entire nation, but what precise rights were contained in that authority was not always clearly determined ; hence arose abuses. Of the sees which boast, or have boasted, of the primatial honor we may mention Carthage in Africa, .Arles and Rhcitns in Erance, Dublin and Armagh in Ireland, Canterbury and York in England, Toledo in Spain, and Salisbury in Germany. Where two or more primates were found in the same country, the jurisdiction of each extended only over certain provinces of that country.

.After the institution of *legati missi,* particularly since the 16th century, primates gradually lost their jurisdiction. Today the title remains, but it is an honorary one, implying at the most a right of precedence, if we except perhaps the primate of Gran in Hungary, who still seems to enjoy a few primatial prerogatives of a jurisdictional character.

§3. Archbishops or Metropolitans
(c. 272-280)

Definition— Next in rank to primates come archbishops or metropolitans. The two terms arc synonymous. Metropolitan originally meant the ruler of the Metropolis or chief city of the province, archbishop signifying the head of bishops. Since the third century the archbishop has generally been the bishop of the metropolis ; hence, from that time the terms have been used interchangeably.

An archbishop, then is a bishop who presides over an ecclesiastical province, i. e., over a well defined territory embracing a number of dioceses. The bishops of these dioceses are called suffragan bishops in respect to the archbishop, for they have the right to a vote *(suffragium)* in the provincial council. The archdiocese and the province

must not be confused: the former is the proper diocese of the archbishop over which he rules in his own right by original authority. It constitutes one of the dioceses of the province.

It is the right of the Pone alone to establish new provinces, determine and change their limits, and to appoint archbishops.

Powers of archbishops— Between the sixth and the eighth centuries the authority of archbishops had attained enormous proportions, due to the then accepted principle that the power of the archbishop in the province was unlimited, save where expressly curtailed by the common law. Hence, they received appeals and recourses against the sentences and decrees of their suffragans; they confirmed the election of the latter; consecrated, judged and deposed them. Due to abuses in the exercise of the metropolitan jurisdiction on the one hand, and the gradual centralization of authority at Rome on the other, the authority of archbishops slowly waned in direct proportion as the Roman Pontiffs began to reserve to themselves so-called major cases. The principle was finally established that an archbishop possesses only those rights which the law expressly grants him.

Those rights are listed in c. 274 and 284, a summary of the more important ones following:

1) In his own diocese (archdiocese) an archbishop has the same rights and duties as any other residential bishop.

2) In the dioceses of his suffragans it is his right and duty:

1) To watch over ecclesiastical discipline, and to report excesses, abuses, and negligences to the Holy See. But he cannot issue commands to his suffragans, nor to their subjects, neither can he threaten penalties. Such authority he can claim only during a canonical visitation, which visitation he can make only when the suffragan bishop neglects the periodical visitation of his diocese, and then only after having obtained permission of the Holy See.

2) To receive *appeals* from the *sentences* of his suffragans. Hence, the archbishop's court is the court of second instance with respect to the suffragan courts, e. g., in marriage trials. But *recourse* from *extrajudicial* decrees, i. e., *administrative* acts, of the suffragan must be taken to the competent Congregation of the Holy See.

3) To judge in the first instance controversies concerning the temporal rights of the bishop, of the episcopal *mensa* (revenues), and of the diocesan Curia, unless the bishop chooses to appoint a collegiate tribunal for this purpose.

4) To exercise the pontificals in any church of his province, but not in the cathedral churches *of* his suffragans, without previous knowledge of the latter.

5) To convoke provincial councils, and to preside at them (c. 284).

Titles, precedence, insignia—Hitherto in English-speaking countries an archbishop was addressed as *Your Grace, His Grace,* and bishops as *Your Lordship, His Lordship.* By decree of the Ceremonial Congregation (Dec. 31, 1930; *Acta,* XXIII, 22) archbishops as well as bishops now have the common title of *Your (His) Most Reverend Excellency (Excellentia Reverendissima).*

In his own province an archbishop takes precedence over all suffragans. Outside of his province, he likewise precedes all bishops, saving the bishop in whose diocese the sacred function is held. In that case the local bishop precedes all archbishops, saving his own metropolitan.

The distinctive dress of an archbishop is the pallium. This is a circular band of white wool about two inches wide, which, when placed over the shoulders forms a circle about the neck, and has two pendants each about two inches wide and a foot long one dropping down in front, the other down over the back. The pallium is ornamented by six black crosses interwoven into the texture. The pallium is worn over the chasuble. The various historical forms, as also the present form of the pallium are graphically illustrated in the Catholic Encyclopedia under the caption *Pallium.*

Since the pallium symbolizes the participation of the papal authority, every archbishop must, within three months of his elevation to the archbishopric, petition the Holy Father for the pallium, either in person or through a proxy. For, until he is invested with the pallium, no archbishop-elect can validly exercise the jurisdictional acts of a metropolitan, such as receiving appeals, convening a provincial council, etc. In fact, he cannot, before that time, *licitly* perform liturgical acts which require the use of the pallium, and this is true even though he be a consecrated bishop.

The pallium may be worn in any church of the province, but neither outside the church nor outside the province. It can be worn only at High Mass, and on certain major feast days, designated in the Roman Pontifical.

Titular archbishops do not wear the pallium save by special privilege. They have only the title, not the jurisdiction of archbishops. Sometimes this honor of the pallium is granted to mere bishops.

ART. III.

Vicars and Prefects Apostolic
(c. 293-311)

Definition—Vicars and prefects Apostolic are those ecclesiastics who rule over missionary territories, i. e., territories which have not been erected into dioceses, or restored to the status of a diocese. Since these territories do not form an integral part of any diocese, it follows that they are directly subject to the jurisdiction of the Roman Pontiff, who governs them through his representatives. In this sense vicars and prefects Apostolic are the Pope's assistants in missionary countries.

A vicar Apostolic is usually a titular bishop, a prefect Apostolic, a priest. First a mission is erected into a prefecture, and when it has attained a certain degree of internal organization and perfection it is elevated to the rank of a vicariate.

Both the vicar and the prefect Apostolic have ordinary jurisdiction, which however is vicarious, since it is exercised in the name of the Pope and by his authority. Hence, they do not govern their territories in their own name and by original right, as do residential bishops. For, although at one time missionary countries were evangelized by bishops, who thereafter governed such districts in their own name, it was found more convenient, and more in harmony with the nature of things, to entrust the charge of missionary districts to papal vicars. The reason is that it is the peculiar function of the episcopal office to govern the flock *(regere fideles).* But in the missions where the faithful are so few in number, more attention must be given to converting *infidels* than to ruling the *faithful.*

Rights and duties—Vicars and prefects Apostolic have the same powers and rights as have residential bishops so far as jurisdiction is concerned. But they cannot be named in the Mass (S. C. Rites, Mar. 8, 1919; *Acta XI,* 145).

As to the power of orders, even though they lack the episcopal character, they can impart blessings reserved to bishops, consecrate patens, chalices and portable altars, confirm, and give first tonsure and minor orders.

They have the general duty of supervising the propagation of the faith in their territories. To this end they can exact obedience of all their missionaries, both secular and religious. They are bound to make a canonical visitation of their territories from time to time, and to inquire concerning faith and morals, the administration of the sacraments, sacred preaching, the observance of holydays, divine

worship, the education of youth, and matters of ecclesiastical discipline in general. They must give a written quinquennial report on the state of their mission to the Pope, i. e., the Congregation of the Propagation of the Faith. Moreover, vicars, but not prefects Apostolic, must make a *visitatio ad limina* in the same manner as residential bishops.

Honorary rights— Vicars and prefects Apostolic, who arc titular bishops, enjoy all the honorary prerogatives accorded to this class of dignitaries. If they are not bishops, they can claim the title and prerogatives of Prothonotaries Apostolic *de numero participantium*.

ART. IV.

Apostolic Administrators
(c. 312-318)

An Apostolic administrator is an ecclesiastic (sometimes a titular bishop, sometimes a neighboring residential bishop), who, under exceptional and grave circumstances, is appointed by the Pope to take charge of a canonically erected diocese. The cleric, so appointed, does not govern the diocese in his own name but in the name of the Pope, and by his authority. His jurisdiction, although ordinary, is vicarious, and to the extent that it is vicarious he may be said to assist the Pope *extra Curiam*.

Administrators Apostolic may be appointed to a diocese *sede plena* or *sede vacante*. *Sede plena,* it may he that the bishop has been exiled, suffers from ill health, has been suspended, has incurred the odium of the people or of the civil authorities, etc. *Sede vacante*. it may happen that the cathedral chapter, or the diocesan consultors, are impeded from electing a vicar capitular or diocesan administrator.

Apostolic administrators receive permanent or temporary appointment. If permanently appointed, they have the same rights and duties as residential bishops; if temporarily appointed, their status is that of the capitular vicar, or diocesan administrator.

If the see is not vacant, the jurisdiction of the bishop and vicar-general is suspended. And while the Apostolic administrator is in no way subject to the bishop, nevertheless he may not interfere in his personal affairs, nor proceed against the vicar-general for acts of past administration. These rules obtain insofar as they are not expressly modified by contrary instructions contained in the letters of appointment.

The office of an Apostolic administrator does not cease upon the death of the Pope, or of the bishop whom he replaces. If temporarily appointed during a vacancy, the Apostolic administrator loses his jurisdiction when the new bishop takes possession of the see. If appointed *sede plena,* his authority may cease in any one of a number of ways, c. g., if the bishop is reinstated, if the administrator is removed, if his term has expired, etc.

ART. V.

Inferior Prelates

A *real prelate* is any ecclesiastic with jurisdiction in the external forum: an *honorary* pfclate is a cleric who enjoys the title of prelate but lacks jurisdiction in the external forum.

§1. Real Prelates
(c. 319-327)

Real prelates are *major* prelates if they are bishops, otherwise they are termed *inferior,* or *minor,* prelates. Having spoken of the major prelates who assist the Pontiff *extra Curiam,* we shall now say a few words about inferior prelates who arc the Pope's ministers outside of Rome. It is true that we have not discoursed on residential bishops who are major prelates because these arc not the Pope's assistants, but govern their dioceses in their own name (cfr. chapter IV). Neither are we concerned with those clerics who arc real prelates but assist the bishop, e. g., the vicar-general, the diocesan official, etc.

By divine law the faithful should ordinarily be governed by bishops who exercise jurisdiction in their own name, yet nothing prevents the Pope from entrusting a portion of his authority to clerics who are not bishops, so that these too may govern the faithful in his name in virtue of jurisdiction granted them both for the external and internal forum. Insofar as these clerics enjoy a derived papal jurisdiction for the external forum, they must be considered real prelates in the canonical sense of the word.

There arc three grades of inferior prelates who act by authority of the Pope, depending upon their degree of exemption from the jurisdiction of a bishop:

1) The lowest grade of minor prelates arc those who enjoy

a passive exemption only, for they have jurisdiction only over their religious subjects within the confines of a monastery or convent. These arc abbots of independent monasteries, *{abbates regulares de regimine),* and major superiors in clerical exempt religions. More will be said concerning these prelates on pp. 308 *if.,* 373.

2) A higher grade of minor prelates comprises those who rule over secular *laymen* but within the territories of local bishops, e. g., military chaplains, clerics appointed by the Holy See for the government of the faithful of a certain rite, nationality, etc.

3) The highest grade of minor prelates are those who rule both clergy and laity within a territory belonging to no bishop in countries where the hierarchy is fully established. These arc called abbots and prelates *nullius,* i. e. *nullius dioecesis.*

Abbots and prelates nullius— These are prelates who rule over a territory separated from every diocese, and have a clergy and laity of their own. They arc abbots *nullius* if their church is an abbey church, prelates *nullius* otherwise. Abbots *nullius* arc invariably members of the Benedictine Order, prelates *nullius* may be secular clerics, or non-Benedictine religious.

Not a few abbacies *nullius* owe their origin to the gradual formation in the Middle Ages of some town around a monastery situated in a remote place distant from any city. By degrees the jurisdiction of the abbot reached out beyond the monastery walls extending itself to all the inhabitants of the town. This enlargement of power was subsequently ratified by the Popes. Prelacies are explained by the fact that some part of a diocese governed by an archpriest or archdeacon in the bishop's name, came in course of time to be governed by the cleric in his own name, and this order of things was sanctioned by custom, prescription, or papal induit.

Today abbacies *nullius* and prelacies *nullius* together number about 70 (cfr. *Annuario Pontificio).* In the United States we have one abbacy *nullius,* that of St. Mary's at Belmont, N. C. Famous abbacies *nullius* are those of Monte Cassino, and of St. Paul's outside the Roman Walls. Of the prelacies *nullius* several are in South America.

An abbot *nullius* is elected by his abbey chapter of religious; a prelate *nullius* by his chapter of religious if he is a religious, otherwise by his secular chapter. In every case the election requires the confirmation of the Pontiff.

Abbots and prelates *nullius* enjoy the same jurisdictional rights as residential bishops. As to the power of orders, even though they lack the episcopal character, they may impart all episcopal blessings.

consecrate patens, chalices, movable and immovable altars, confirm, give first tonsure and minor orders, and exercise the pontificals with throne and canopy. These privileges are accorded them only within their own territories. But outside of their territories they may wear the pectoral cross, the studded ring and the violet skull-cap. Abbots *nullius* cannot validly consecrate churches outside their territory even with permission of the local Ordinary (Code Comm. Jan. 29, 1931; *Acta* XXIII, 110).

§2. Honorary Prelates
(c. 328)

Honorary prelates— These simply have the title of prelate but no prelatial jurisdiction (monsignors). They belong to the Pontifical Family (the Papal Household), not to be confused with the Roman Curia.

Honorary prelates are of three classes: 1) prothonotaries Apostolic, and these again arc either *de numero participantium,* or *supernumerarii,* or *ad instar participantium* ; 2) domestic prelates, although these often are prelates living outside of Rome; 3) papal chamberlains and chaplains. The rights and privileges of each class have been described anew in the Constitution *Ad incrementum* of Aug. 15, 1934 *(Acta* XXVI, 497).

Honorary prelates as such, i. e., by reason of their monsignor rank alone, enjoy no jurisdiction. If they have jurisdiction, it will be from some other source, e. g., a monsignor who at the same time is vicar-general.

ART. VI

Ecumenical, Plenary, Provincial Councils

In these gatherings clerics exercise jurisdiction as a group which they would not possess as individuals.

An *ecumenical* council is a general church council to which all bishops of the Church are invited. They can be convoked by the Pope alone, who also presides in person or through his delegate. e. g., a cardinal legate. Besides all residential bishops, the following are invited with the right of deliberative vote: cardinals, patriarchs, (even though they happen not to he bishops), abbots and prelates *nullius,* abbots *de regimine,* and supreme heads of clerical exempt religions. Titular bishops and archbishops may come if

invited. Theologians and canonists if invited have only a consultive vote. An ecumenical council under the headship of the Roman Pontiff has supreme jurisdiction in the universal Church. Its decrees, therefore, bind throughout the entire Catholic world, but only after they have been confirmed and promulgated by the Pope (c. 222-229).

A *plenary* council is an assembly of all the bishops of a kingdom or nation. It cannot be convoked without papal permission. The Pope will then send his legate to convoke and preside at the council. The reason for this is that the laws of a plenary council bind in even' diocese of the nation. It is only the Roman Pontiff who can endow laws with this general force, for bishops even by majority vote cannot make laws for a diocese whose bishop does not consent. Hence, the council is really exercising vicarious papal authority as a council. Those to be invited with deliberative vote are: residential archbishops and bishops, administrators Apostolic, abbots and prelates, *nullius,* vicars and prefects Apostolic, and vicars-capitular. Titular bishops may be invited. Others invited have only a consultive vote (c. 281-292).

A *provincial* council is an assembly of all the residential bishops of an ecclesiastical province, who also cast deliberative votes. Titular bishops may be invited. But two consultors from each diocese, all regular abbots, and major superiors of clerical exempt religions with residence in the province must be invited, and have a consultive vote. The council's laws bind throughout the province if confirmed by the Holy See. A provincial council ought to be convoked once every 20 years (c.281-292).

N. B. A *synod,* as we shall see, is a gathering of the priests of the diocese under the presidency of the bishop to enact regulations for the diocese.

A full gathering of the authorities in a religious Order or Congregation is usually called a *chapter.*

Chapter IV

BISHOPS

By divine ordinance the Church must be ruled not only by the Pope but also by bishops. Having thus far described the papal government in the Church, we shall now consider its episcopal government.

As the Sovereign Pontiff has his assistants who aid and counsel him in the government of the universal Church, so too have the bishops their assistants who help them in the government of the diocese.

In the present chapter we shall speak of bishops considered in themselves before passing on to consider in the next two chapters those who assist the bishop in the government of the diocese, and in the sacred ministry.

We shall consider: 1) the nature of the episcopal office; 2) the appointment of bishops; 3) their qualifications; 4) their rights and powers; 5) their obligations; 6) their privileges; 7) loss of the episcopal office; 8) titular bishops.

ART. I.

Nature of the Episcopal Office
(c. 329, §1)

Bishops are the successors of the Apostles by divine institution who preside over individual churches, which they govern in their own name, though under authority of the Roman Pontiff.

1) Bishops are the *successors of the Apostles,* but within limits. For in the Apostles we can distinguish three powers: the apostolic, the priestly and the episcopal power. In virtue of their *apostolic* power each Apostle possessed the gift of infallibility, and with due submission to St. Peter as the Head of the Apostolic College, each Apostle, without restriction as to territory, forgave sins, preached the gospel, established churches (dioceses), appointed and consecrated bishops, and laid down laws for their bishops and their flocks. Such

apostolic power, because *extraordinary,* has not passed to their successors. In virtue of their priestly power each Apostle had the fullness of the priesthood, i. c., of the power of orders. Not only could they offer Holy Mass and administer sacraments in common with the presbyters, but unlike the latter they could administer the sacrament of confirmation and confer holy orders. This fullness *of* the priesthood has been transmitted to their successors, the bishops. In virtue of their *episcopal* power the Apostles governed and ruled the faithful, and this power, too, is possessed by the bishops, each with respect to the particular church which has been assigned to his jurisdiction.

Bishops are the successors of the Apostles not individually but only collectively. In other words the *college of* bishops has succeeded the *college* of the Apostles in office. For excepting the bishop of Rome, perhaps it is true to say that no bishop now living can claim direct jurisdictional descent from any Apostle.

2) Bishops arc the successors of the Apostles by *divine institution.* Christ, our Lord, willed that His Church should be governed not only by St. Peter and his successors the Roman Pontiffs, but also by the Apostles and their successors. For, to the eleven as well as to St. Peter was directed the divine command: *Going, therefore, teach ye all nations, baptizing them* (Mt. XXVIII, 19). Moreover, to the eleven as well as to St. Peter did Our Saviour promise perpetuity of office: *Behold, I am with you (vobisetim) all days even to the consummation of the world* (Mt. XVIII, 20). As a matter of fact the Apostles took care to appoint holy men to supervise the Christian communities *(ecclesiae)* which they founded. The individual who thus succeeded an Apostle was already from the beginning of the second century universally called *episcopus,* which means a superintendent, inspector. Hence, it was not the body of presbyters, but individuals with monarchical authority, who by divine law were to succeed the Apostles. That the presbyterial system, though existing in a few churches in the first century, was not intended as a permanent institution by the Apostles, is fully proven in standard works of dogmatic theology (Tanquery, *Synopsis Theologiae Dog.* I, n. 633-657).

3) Bishops preside over *individual churches.* From the earliest times the territory over which a bishop ruled was called a diocese, originally a territorial division in Roman civil law comprising a number of prefectures. This system of episcopal government by territory, although originating with the Apostles, dors not seem to be of divine law; otherwise it is difficult to explain how certain bishops can exercise only personal jurisdiction, as in the case of the episcopal head of military chaplains, the Greek-Ruthenian bishops

of the United States, and in general all the bishops of the Oriental Uniate rites. It is certain, however, that the diocesan system is of human law in the sense that the various dioceses now existing, or which have existed, are the work of man. At first the dioceses were established by the Apostles; after their time by the provincial councils in the East; later, in the West by the Roman Pontiff alone, though participation in this matter by the civil ruler was permitted. Today in the Western Church it is the Roman Pontiff alone who erects, circumscribes, unites, and suppresses ecclesiastical dioceses and provinces (c. 215, § 1).

4) Bishops govern their dioceses *in their own mime,* just as the Apostles ruled .their churches in their own name. Bishops are not the vicars of the Pope, no more than were the eleven Apostles vicars of St. Peter. Hence, their jurisdiction is original, not derived; ordinary, not delegated. The question is agitated whether bishops receive their authority from God immediately, or onh mediately through the Pope. The controversy has no practical consequences, for no matter which opinion is followed, it is the Pope who must intervene before any bishop can in fact exercise episcopal jurisdiction validly. It is he who by explicit consent (or tacit consent as in the primitive Oriental Church) assigns a bishop his diocese and people, who transfers, suspends and deposes bishops. /Ml are agreed, on the other hand, that the episcopal power of *orders* comes immediately from God through consecration.

5) Bishops govern their dioceses *tinder authority of the Roman Pontiff.* The reason is that the Pope by divine law holds the primacy of jurisdiction in the Church, that authority being ordinary and immediate in the universal Church, as we have said elsewhere. There is no contradiction or conflict involved in this two-fold authority over the same subjects, provided the proper subordination of the lower to the higher authority be observed. Thus, c. g., no bishop can legislate contrary to the common law, nor may he in his diocese obstruct the enforcement of that law in any manner whatsoever.

What has been said concerning the nature of the episcopal office, applies only to the office of a *residential* bishop. A residential bishop, as the name implies, is one who resides in his jurisdiction, or diocese, and exercises authority therein. A titular bishop, on the other hand, is a consecrated bishop without episcopal jurisdiction. We say, without *episcopal* jurisdiction, for inasmuch as these titular bishops are sometimes appointed Apostolic vicars, administrators, legates, etc., they indeed share in the papal jurisdiction, but as vicars of the Pope; they do not exercise episcopal jurisdiction in their own name and by original right as do the residential bishops, and as behooves a true

successor of the Apostles. Titular bishops will be discussed more fully in Art VIII of this chapter.

Residential bishops may be divided into: 1) *suffragan* bishops and *exempt* bishops, depending upon whether they are subject immediately to an archbishop and have a vote *(suffragium)* in the provincial council, or rather whether they arc subject immediately to the Pope; 2) residential bishops *simply, archbishops, primates* and *patriarchs,* the latter three sharing papal jurisdiction to some extent over other bishops, as already explained; 3) *secular* bishops and *religious* bishops, according to whether before their consecration they were secular or religious priests.

From what has been said concerning the divine institution of the episcopate it follows that the Church must ordinarily be governed by bishops ruling in their own name. It is beyond the power of the Pope, therefore, to abolish the episcopate, and rule all parts of the Church through his vicars. But the Pontiff may in exceptional cases appoint his vicars to govern certain parts of the Church, and this in fact he docs in the case of vicars and prefects Apostolic, administrators Apostolic, abbots and prelates *nullius,* and major superiors in clerical exempt religions with respect to their own religious subjects.

ART. II.

Appointment of Bishops
(c. 329, §2; 332; 333)

The first bishops were appointed by the Apostles. After their time, bishops were in the primitive ages chosen by the clergy, with the approval of the laity, the choice being sanctioned by the neighboring bishops, or by the metropolitan after consulting with his suffragans. But the secular authorities, too, from the earliest times intervened in episcopaj appointments, both in the East and the West. To some extent this was tolerated, and even approved of by the Church. But intervention gradually became intrusion, the climax of which was reached in the ninth and tenth centuries in the form of civil investiture with staff and ring. This abuse having ended in 1122 through the Concordat of Worms, episcopal elections passed exclusively to the cathedral chapters. But here, too, abuses gradually crept in, and developed to such proportions that by the 14th century the Roman Pontiffs began to reserve episcopal appointments to themselves.

Today the rule is that bishops are freely appointed by the Pope.

However, the *designation* of the candidate to be *appointed* can, and does, take place in four ways: 1) a bishop may be both freely *designated* and *appointed* by the Pope; 2) he may be *elected* by the cathedral chapter, as in the dioceses of Prussia, the Upper Rhine Province, and a few dioceses of Austria and Switzerland: 3) he maybe *presented* by the civil government in virtue of a privilege accorded through concordats, as happens today in many Catholic countries; 4) he may be *recommended* by the bishops of a province, and this mode of designating candidates for the bishopric applies to the United States, Canada, Mexico, England, Ireland, Scotland, and to some extent to Poland, France, Holland and Belgium. The rules governing recommendation of candidates in the United States are found in the decree of the Consistorial Congregation under date of July 25, 1916 *{Acta* VIII, 400), a translation of which document is given by Bouscaren in his *Canon Law Digest,* vol. 1, p. 194, *sq.* Briefly the decree states that every bishop should inquire of pious and prudent priests in his diocese their views as to the priest best qualified for the episcopate, and this under the greatest obligation of secrecy. Once every two years the bishops of the province must meet under the presidency of the archbishop in an informal and quiet manner to discuss the candidates suggested. Those who obtain the majority of votes have their names sent to the Apostolic Delegate, and through him to the Holy Sec. It is understood that the Pope is free to appoint to a vacant see a cleric who has not been thus recommended by the bishops.

Whether a candidate is designated through election, presentation or recommendation, it is necessary that he be *appointed,* i. e., receive *canonical institution* from the Pope. Before this time he cannot be said to enjoy any of the jurisdiction of bishops. Nor has he episcopal jurisdiction before he takes canonical possession of his diocese, even though he has received the papal letters of appointment. This canonical possession of his sec every' bishop must take, at least within 4 months of the reception of the letters of appointment, unless a legitimate cause excuses. The canonical possession is effected when the bishop, either in person or through a proxy, exhibits to the cathedral chapter, or the body of diocesan consultors, the papal letters of appointment. A mere priest must receive consecration within three months of notice of his appointment to a see (c. 333-334, §2,3).

ART. III.

Qualifications Required in Bishops (c. 331)

Those who have the privilege of electing, presenting or recommending candidates for the episcopate should bear in mind the qualifications required in such candidates by common law. These are:

1) The candidate must have been born of legitimate wedlock, and legitimation by subsequent marriage of the parents does not suffice;

2) He must be at least 30 years of age;

3) He must have been ordained at least five years;

4) He must be endowed with good character and morals, piety, zeal for souls, prudence, and possess such other gifts as will render him fit to govern the particular diocese in question (e. g., executive and administrative ability in a diocese to be newly organized);

5) He should have a doctorate, or at least a licentiate, in sacred theology or canon law, or at any rate he should be truly versed in these sacred branches; in the case of a religious, the candidate must have received such degrees or testimonials of learning from his major superiors.

It belongs to the Holy See to judge in every case whether a given candidate does, or does not, possess the qualifications in question. This will be the Secretariate of State, the Consistorial Congregation, or the Propaganda, according to the nature of the case.

ART. IV.

Powers of Bishops

Bishops are the successors of the Apostles in the three-fold office of sanctifying, teaching, and ruling the faithful.

§1. Power of Orders

Bishops possess the fullness of the power of orders to enable them to sanctify souls. By divine law it is proper to them alone to confer the sacrament of confirmation and holy orders. By ecclesiastical law bishops arc the *ordinary* ministers of certain sacramentals, namely, they consecrate churches and altars, and the

holy oils used in the administration of certain sacraments, and they impart those blessings which must be accompanied by unctions.

When a bishop performs functions proper to the episcopal order for which the use of the staff and mitre is required by sacred liturgy, he is said to *exercise the pontificals.* This right to exercise the pontificals in any church of his diocese, including exempt churches, is recognized in every residential bishop by the common law. He may allow another bishop to exercise the pontificals in his own diocese, and even permit him the use of throne and canopy. To exercise the pontificals outside of his diocese a bishop needs at least the presumed consent of the local Ordinary of that place, and the consent of the religious superior if there is question of an exempt religious church, (c. 337).

§2. Teaching Power

We have said that the gift of infallibility enjoyed by each Apostle has not passed down to his successors. Infallibility is now vested only in the college of bishops, whether gathered in ecumenical council under the presidency of the Sovereign Pontiff, or scattered throughout the world. Nevertheless, by divine law the individual bishops, considered singly, are still the real doctors and teachers of their people, under the authority of the Roman Pontiff (c. 1326). Included in that teaching office arc the following rights and duties:

1) To preach the gospel in person unless a lawful cause excuses; to see that pastors comply with the same obligation, and to grant preaching faculties to all priests in the diocese (c. 1327 ; 1337) ;

2) To watch over schools, colleges and seminaries in the diocese so that nothing is taught contrary to faith and morals (c. 1336, 1357, 1381, 1382);

3) To censure books before publication, and to forbid the reading *of hooks and pamphlets dangerous to faith or morals (c. 1385, §2; 1395, §1);

4) To forestall, correct and suppress any abuses, superstitions, or scandals which may arise in connection with the administration of the sacraments and sacramentals, public worship, sacred preaching, indulgences and relics (c. 336, §2, and the various titles of Bk. 111 of the Code which contain the legislation on the above subjects).

§3. Power of Jurisdiction

Residential bishops are the ordinary and immediate pastors of their flock (c. 334, §1). They possess the fullness of legislative,

administrative and judicial power throughout the diocese, though always in subordination to the Roman Pontiff (c. 335, §1).

However, it may be noted, residential bishops arc not forbidden to share their jurisdiction with certain clerics *of* the diocese. In fact, the law makes this obligatory in some cases, as we shall see.

A. Legislative Jurisdiction

'I'he bishop is the sole lawgiver in the diocese with respect to all other clerics and prelates in the diocese, but within due restrictions. Thus, he cannot legislate contrary to the prescriptions of common law, the decrees of the Holy Sec, or the decrees of plenary and provincial councils. But he can. in respect to all such legislation, issue interpretations of the law where the law is not clear, and can enact regulations enforcing the higher law with more detailed rulings if that law is too general or vague. In these matters the bishop is not wont to commit to other clerics of his diocese such authority.

The bishop can legislate both in and out of synod. A diocesan synod is a gathering of the clergy of the diocese convoked by the bishop for the discussion of matters necessary or useful to the administration of the diocese. By common law the synod must be held at least once every ten years. Preferably it should be held in the cathedral. Those who arc called to the synod, however, have, only a consultive vote, the bishop being the sole legislator (c. 356-362).

'I'lic bishop may dispense from his own laws and those of his predecessors, by original right (c. 80). He may dispense from the laws of the provincial and plenary council for a just cause and in individual cases (c. 291, §2). From the common law he may not dispense save in three cases: I) if he have delegated, e.g., quinquennial faculties, and to the extent that such faculties authorize him to dispense; 2) where the common law expressly or impliedly grants him dispensing powers, e. g., concerning marriage impediments in danger of death, concerning the publication of the banns, the laws of fast and abstinence, etc.; 3) in virtue of c. 81 the bishop can dispense from any and every general ecclesiastical law when the case is urgent and time does not permit recourse to the Holy See, and there is question of some matter in which the Holy See is accustomed to dispense (c. 81).

B. Executive Jurisdiction

Xot only arc bishops executors of their own laws, but they are the ordinary administrators and enforcers of the common law in their dioceses. To this end, as we shall see, they arc bound by

common law to visit their dioceses at fixed intervals, and must make a quinquennial report to Rome on the state of their dioceses.

As administrators of the common law, bishops: 1) admit candidates to sacred orders, incardinate and excard inate clerics, and grant diocesan faculties to perform the sacred ministry; 2) they appoint clerics to vacant offices and benefices, transfer, suspend and remove them; 3) they erect, unite, dismember and suppress ecclesiastical offices and benefices; 4) they see to the erection, maintenance and discipline of the diocesan seminary; 5) they grant letters of incorporation to collegiate and non-collegiate persons and institutions, e.g., confraternities, hospitals, orphanages, etc.; 6) they supervise the administration of all diocesan temporalities, demand reports of pastors, impose taxes and assessments; 7) they inflict censures and other penalties when necessary to procure the observance of the law; 8) in virtue *of* their teaching office they perform those administrative acts which were described on p. 235; 9) they issue permissions prescribed by law for the licitness of certain acts, e.g., permission to read prohibited books, to celebrate Mass in private homes, to say Mass outside of a church and oratory, etc.

In the performance of these administrative acts, the bishop either enacts administrative legislation, especially in synod, or issues rules, precepts, instructions, or grants rescripts.

C. Judicial Jurisdiction

The bishop is the ordinary judge of first instance in all trials which belong to the ecclesiastical forum, although some few cases arc reserved to the Holy Sec in the first instance (cfr. p. 582). But the Code does not want the bishop to exercise his judicial power personally save in rare cases. He should appoint a priest to the office of diocesan Official with vicarious ordinary jurisdiction to preside at all trials in the diocese (p. 583).

ART. V.

Duties of Bishops

The rights with which bishops are vested, and which we have just discussed, may impliedly be viewed as so many duties also, at least in most instances. Here we shall consider other more direct duties.

Residence— Even though they should happen to have a coadjutor, residential bishops are bound to reside in their dioceses.

But a bishop is allowed a three months' vacation each year. The *visitatio ad limina,* and his absence from the diocese while attending an ecclesiastical council, or for any other grave reasons, is not computed in the bishop's vacation. But he should not be absent from his cathedral during Advent and Lent, and on Christmas, Pentecost or Corpus Christi, save for grave reasons (c. 338).

Missa pro populo—Residential bishops are obliged to apply Mass for the faithful of their dioceses on the days determined by law, namely as in c. 339. This obligation being incumbent on all pastors as concerns their parishioners, we shall list the days referred to below on p. 275.

Fisitatio ad Limina—This implies a three-fold obligation: 1) to submit a report to Rome on the state of the diocese; 2) to visit the tombs of the Apostles Peter and Paul; 3) to pay a personal visit to the Pope (c. 340-342).

Bishops must submit once every five years a written report to the Holy See (to the Consistorial Congregation bv U. S. bishops) on the spiritual and temporal condition of their dioceses. That some system may be observed in this matter lest the Congregations be overburdened one year and unoccupied the next, these quinquennial periods are so fixed that they are to be computed reckoning from 1911 as follows: in the first year (1911) the report is submitted by the bishops of Italy and the adjacent Islands; in the second year by the bishops of Spain, Portugal, France, Belgium, Holland, England, Scotland, Ireland and the adjacent Islands; in the third year by all other bishops of Europe and the Adjacent Islands; in the fourth year by the bishops of North, Central and South America and the adjacent Islands; in the fifth year by the bishops of Africa, Asia, Australia and their adjacent Islands. Thereupon, the cycle begins to repeat itself in the above described order. If the year for making the report should happen to fall within the first two years of a bishop's occupancy of the see, he may for that quinquennial period omit the report. The formula which must be employed when drafting the report is that issued in the form of a questionnaire by the Consistorial Congregation, Nov. 4, 1918 *(dicta* X, 487).

During the year assigned for submitting his quinquennial report the bishop must also visit and pray at the tombs of St. Peter at the Vatican, and St. Paul Outside the Walls. Likewise, he must pay a personal visit to the Sovereign Pontiff, give an oral account of the administration of his diocese, and in turn receive from the Holy Father salutary instructions, consolation and encouragement. A bishop may substitute in his place for this two-fold visit his coadjutor or auxiliary, if he have one, but not a priest without previous

approval from Rome. Bishops who live outside of Europe may defer their visit to Rome, and make it every ten years, but the quinquennial report must be sent in every five years.

Visitation of diocese (c. 343-346)—The bishop must visit his entire diocese at least once every five years, but in such wise that annually some part of the diocese be visited. With us this is usually on the occasion of Confirmation. This visitation should be conducted in person, unless the bishop is lawfully impeded, in which case he can delegate another, e. g., the auxiliary bishop, to fulfill this duty. The *scope* of the visitation is that sound doctrine be preserved, morality safeguarded, vice suppressed, and innocence of life, piety and discipline among clergy and laity be fostered.

The *object* of the visitation includes things, persons and places: *things,* i. e., sacred furnishings, sacred vessels, altars, confessionals, and the administration of church property, including all church registers; *persons,* i. e., the clergy, religious and laity, whether considered as individuals or corporations, e. g., confraternities; *places,* i. e., churches, chapels, Catholic schools and institutions, e. g., hospitals and orphanages.

With reference to religious, the right of the local Ordinary to visit these will be discussed later on p. 314.

The *mode of procedure* on the occasion of the visitation should be paternal. That is, without resorting to ecclesiastical penalties in the capacity of a judge, the bishop ought to point out in a fatherly way where things might be bettered. He may even administer mild rebukes and admonitions, and impose penances, if the case so warrants. From the bishop's precepts or penances thus given *extra judicium* there lies recourse only *in devolutivo.* Should the gravity of some abuse urge the bishop, even there and then on the occasion of the visitation to proceed as judge, and set up court, he may do so, hut from his sentence the condemned has a right to appeal to the archbishop *in suspensivo,* the sentence in the meantime being held in abeyance.

ART. VI.

Privileges of Bishops

These may be reduced to three: 1) the episcopal insignia; 2) the right of precedence; 3) all other rights and privileges.

Episcopal insignia—They are: the violet dress or robe, the violet

skull-cap, the violet biretta, the mitre, crosier, pectoral cross, pontifical ring, dalmatics, tunicella, sandals and gloves (c. 349, §1, n.2). In addition, all bishops, as we said, have the title of Excellency and Most Reverend (p. 222).

Precedence— In his own diocese a residential bishop precedes all other bishops and archbishops, excepting cardinals, papal legates and his own metropolitan. Outside of his diocese the general rules as on p. 136 obtain (c. 347).

Other rights and privileges— Of the various episcopal privileges found in the Code we confine our attention only to the following: 1) to empower any priest to hear their confession, granting him at the same time faculties to absolve from all reserved sins and censures, saving censures reserved *specialissimo modo* to the Holy See, and those attaching to a violation of the secret of the Holy Office; 2) to bless the faithful after the manner of bishops; i. e., with the triple sign of the cross; 3) to bless rosaries, crosses, medals, scapulars and statues with all the indulgences which the Holy See is wont to grant, and this by the sign of the cross alone, unless liturgical books contain a special formula; but this being a personal privilege, not in the nature of a quinquennial faculty, it cannot be delegated by the bishops to his priests (S. Penit., July 18, 1919; *Acta* XI, 332; Nov. 10, 1926; *Acta* XVIII, 500; 4) to celebrate Mass on a portable altar and at sea, and to consider every altar at which they celebrate a privileged altar; 5) to celebrate Mass anywhere according to their own calendar; 6) to gain indulgences attached to the visit of a particular church or chapel by a visit to their own chapel; 7) to grant an indulgence *of* 50 days in all places of their jurisdiction; 8) to erect throne and canopy in any church of their diocese (c. 349).

ART. VII.

Loss of Episcopal Office

While the episcopal power of *orders* is never lost so that even a suspended bishop can validly confirm and ordain, yet episcopal *jurisdiction* can be lost on general principles applicable to the loss of ordinary jurisdiction (c. 208), namely, by transfer, resignation accepted by the Pope, and deposition.

ART. VIII.

Titular Bishops

Titular bishops differ from residential bishops in that being consecrated they have the episcopal power of orders, but they are lacking in the jurisdiction of residential bishops. Still the law accords them all the privileges of bishops just described above, saving the right to grant a 50 days* indulgence, and to set up throne and canopy. Precedence among titular bishops is governed by the general rules on p. 136.

The institution of titular bishops may be traced to the expulsion of residential bishops from their sees in countries invaded by infidels beginning with the seventh century, and the desire of the Holy See to preserve the memory of those ancient sees. Fleeing to other countries they were taken in by the local bishops, whom they assisted especially in pontifical functions. Until recently it was wont to call them *episcopi in partibus infidelium,* but in virtue of a decree *of* the S. Prop, issued Feb. 27, 1882 *{Collectanea,* n. 1565), they arc now called titular bishops. According to whether the sec of which they are titulars was once only a diocese, or an archdiocese, we have titular bishops and titular archbishops.

Titular bishops and archbishops are usually the major officials in the Roman Curia, papal legates of all kinds, Apostolic vicars in missionary countries, and Apostolic administrators. Titular bishops are not bound to apply Mass for the faithful of their now extinct sees, but it behooves them to do so occasionally out of charity.

Coadjutor and auxiliary bishops arc likewise titular bishops. These are given to the residential bishops, especially of the larger dioceses, to supply for them *in pontificalibus.* They are at the present day what *chorepiscopi* were between the third and eighth centuries. A coadjutor differs from an auxiliary bishop in that he is appointed to a see with the right of succession, not so the latter. Hence, upon the vacancy of the see the coadjutor becomes the residential bishop as soon as he presents to the cathedral chapter or to the diocesan consultors his letters of appointment. An auxiliary's office ceases with the vacancy of the see, unless his letters of appointment read otherwise, e. g., it may be provided that he continue as Apostolic administrator until the vacancy is filled. The authority of coadjutor and auxiliary bishops *sede plena* depends upon the papal letters of appointment and the commission of the residential bishop. They need not of necessity fill the office of vicar-general.

Chapter V

THE BISHOP'S ASSISTANTS IN THE GOVERNMENT OF THE DIOCESE

As the Roman Pontiff has need of prelates to aid him in the government of the universal Church, so, too, a bishop shares his authority with clerics of the diocese in governing souls under his charge.

The officials who help the bishop in governing the diocese form two groups: 1) the episcopal curia; 2) the episcopal senate. We might add the episcopal court, but the Code does not speak of the diocesan court at this place, but rather in Bk. IV.

ART. I.

The Episcopal Curia

To the episcopal or diocesan curia belong: 1) the vicar-general; 2) the chancellor; 3) notaries; 4) synodal examiners; 5) parish priest consultera; 6) vicars-forane.

We shall consider the rights, duties and appointments of these officials in turn, but first we premise a few historical notes concerning the epicopal curia in general.

Historical notes— In the first three centuries of the Church the words *curia* and *presbytery* were synonymous: the presbytery was the bishop's curia. It included all the clergy of the diocese, not only the presbyters or priests, but also the deacons and, after their institution in the third century, subdeacons and clerics in minor orders.

All lived in the episcopal city near the bishop, assisting him both in the sacred ministry, each according to the grade of orders he possessed, and in the government of the diocese. Administrative, or governmental, functions were entrusted to clerics irrespective of their rank in the hierarchy of orders. Neither were such governmental functions committed permanently to definite individuals, but one or several were chosen whenever the occasion arose requiring their services; e. g., as administrators of temporalities, as judges for this or that case. So, too, the bishop, when matters of grave consequence

of an administrative nature had to be confronted, was wont to call in the entire presbytery for their discussion, deliberation and advice.

With the cessation of persecutions in the fourth century, and the consequent increase in the number of faithful, it became impossible for the bishop to govern the diocese in the manner just described. Accordingly, ecclesiastical offices began to be created. The first office was probably that of the archpriest in the fourth century. It was the duty of this official, who was the chief among priests, to supervise the conduct of the presbyters, to oversee everything connected with the sacred ministry, to act as first assistant to the bishop in pontifical functions, and to replace the bishop in the offering of Holy Mass, the dispensation of the sacraments, etc., during the latter's absence. About the same time we find mention of the *archdeacon, or* the chief among deacons. This officer assisted the bishop in the government of the diocese, i. e., in all things which concerned its external policy, administration of temporalities, and other matters involving the exercise of jurisdiction Both the archpriest and the archdeacon lived in the episcopal city, as did all the other clergy', for, as yet, the rural sections had no resident clergy, and moreover, they were the only two clerics holding ecclesiastical offices, or permanent charges.

Until the fifth century' the Christians of the rural districts were cared for by the clergy' of the episcopal city, and these were accustomed to return home immediately after their duties had been performed. But by the fifth century the rural Christian population had increased sufficiently' to warrant the erection of parish churches and the appointment of resident parish clergy. At the same time we find *chorepiscopi,* i. e., as we have seen, rural clerics with both the episcopal power of orders and jurisdiction ; however, they were only-auxiliary bishops to the city bishop, and consequently they were his vicars. In many dioceses, however, in place of chorepiscopi we find *rural archpriests* supervising the conduct of the clergy and all matters belonging to the sacred ministry, and *rural archdeacons* exercising administrative or governmental functions, but whether each archpresbyteriatc comprised a number of parishes is not certain. Probably' the rural archpriest was at first the rector of some rural mother parish church, and exercised vigilance over the clergy of both his own church as also of those filial churches which had developed from the mother church. Thus the rural archpriest would differ from the rural dean *(decanus)* who appears somewhat later, i. e., between the sixth and ninth centuries. The latter presided at the monthly conferences attended by the *pastors* of the surrounding territory or deanery, which conferences were enjoined by law for the purpose

of solving theological and pastoral difficulties, of correcting abuses, and of providing mutual aid and counsel. In time, both the names and offices of rural archpriest and rural dean became synonymous, and merged.

As time went on both the archdeacon and archpriest abused their authority. The archdeacons (both in the episcopal city and the country) had originally the duty of educating aspirants to the sacred ministry, of presenting them to the bishop for ordination, of watching over their conduct and morals, of administering the goods of the Church, repairing sacred edifices, visiting the diocese when deputized by the bishop, and of governing the diocese (in the case of the city archdeacon) during the bishop's absence. Gradually, however, these officers arrogated to themselves other powers, e. g., that of convoking synods, of setting up their own tribunals, of appointing pastors and rural deans, of conducting canonical visitations in their own name, and inflicting canonical censures. In the same way the archpriests, who by law had but the right of surveillance and inspection, began also to conduct visitations and preside at trials.

Since these officers were generally chosen without the intervention of the bishop, sometimes by the cathedral chapter, sometimes by the local clergy', sometimes by the civil authorities, and since, moreover, their's was a life tenure, in order to restrain their excesses the bishops in the 13th century began to appoint general delegates, now known as vicars-general *for* the episcopal city, and vicars-forane for the rural sections, with powers similar to those of the archdeacon- and archpriests. Since these new officers were both appointed by the bishop and removable from office at his good pleasure, there was less opportunity for them to abuse their authority, for as soon as excesses manifested themselves in the case of any individual officer, the bishop could remove him without difficulty. As a matter of fact, the institution of vicar-general and vicar-forane has lasted now for six centuries, while, in the face of such concurrent and rival jurisdiction, that of the archdeacons and archpriests soon waned, so that already' by' the time of the Council of Trent, they' are little more than a name. At the present day the honorary title alone of these offices is retained in many chapters with certain honorary prerogatives, e. g., the archdeacon still presents candidates to the bishop at the time of ordination, and the archpriests have the right of precedence over other canons in the chapters.

§1. The Vicar-General (c. 366-371)

Definition—The vicar-general, as the name implies, is a priest lawfully appointed to exercise ordinary jurisdiction in the whole diocese and in the bishop's name (c. 366, §1). We say, 1) *a priest,* although nothing forbids the appointment of a coadjutor (auxiliary) bishop to this office, if there be one. We say, 2) *ordinary* jurisdiction, for the vicar-general is not a mere delegate of the bishop: his powers are defined and attached to his office by the common law, which notes are characteristic of that species of jurisdiction called ordinary as opposed to delegated, the latter being committed to the person, as we have seen. We say, 3) in the *whole* diocese, and therefore this vicar of the bishop is called \-*ctvc-general* as opposed, e. g., to the vicar-forrtwr. Nevertheless, the authority *of* the vicar-genera! is not absolutely general, but general only within limits, and relatively speaking. For as a rule, the vicar-general should not exercise contentious jurisdiction, this being reserved to another cleric called the Official. Nor has he legislative powers, although he may dispense from the law and issue precepts. Consequently, the vicar-general exercises only general *administrative* or *executive* jurisdiction in the diocese. We have enumerated certain powers comprised under this term above (cfr. p. 237). And even in the exercise of administrative jurisdiction the powers of the vicar-general can be curtailed by the common law, by diocesan statutes, and the bishop's instructions, or reservations, as we shall see. We say, 4) in the *bishop's name,* for the vicar-general, as the name implies, exercises a vicarious, not original, jurisdiction, although such vicarious jurisdiction is nevertheless ordinary and not delegated. He represents the bishop and acts in his place *(vicem gerit episcopi).*

Appointment—There may be but one vicar-general in tht diocese to avoid conflicts and confusion. But several may be appointed if the diversity of rites, or the extent of the territory, makes this imperative.

In the appointment of the vicar-general the bishop is entirely free and independent so that no rights of election, presentation or nomination on the part of others is admissible. The same freedom the Code accords the bishop in the removal of his vicar-general. That is, the vicar-general is removable *ad nutum episcopi,* no particular canonical cause, or charge being required ; but the cleric's good name and honor cannot be prejudiced (c. 192, §3). When the reason for the removal is obvious to all, e. g., infirmity,

such prejudice to honor and good name cannot arise from the removal (c. 366, §2).

Qualifications—The vicar-general must be a *priest* of the *secular* clergy. An Apostolic induit is required for the appointment of a religious to this office. The reason is that by virtue of their rules, constitutions and the common law, religious must reside in their houses, and lead a community life. But where an entire diocese is cared for by a certain group of religious, the vicar-general may be chosen by the bishop from the religious community. Such is not the case where a religious heads a diocese and the majority of priests are either seculars, or do not belong to his community.

The vicar-general must be at least 30 years of age, have a doctorate or licentiate in theology and canon law, or at least be well versed in these branches. Moreover, he must be a man of sound doctrine, tried virtue, prudence, and executive ability.

To preclude nepotism, the bishop is forbidden to give this office to any blood relative of his in the first degree, or the second degree touching the first. Thus, a brother or nephew is excluded, but not a first cousin.

Neither should a pastor be appointed vicar-general, save where this is necessary.

The bishop is not forbidden to appoint a priest of his own diocese to this office. Some decisions of the Holy See in prc-Code days seemed to imply the contrary, probably to insure the vicar-general a larger measure of independence in the discharge of his office (c. 367).

Rights and powers—By virtue of his office the vicar-general possesses the same amount of administrative jurisdiction in the whole diocese as has the bishop *jure ordinario,* saving cases reserved to the bishop (c. 368, §1).

We say *administrative* jurisdiction, for the vicar-general, not being the Official, has no ordinary *judicial* powers.

We say, as has the bishop *jure ordinario,* for the bishop may have some delegated powers of a special nature from the Holy See, which do not then belong to the vicar-general. But quinquennial, and any other *habitual* faculties which the bishop may have received from the Holy Sec belong *ipso jure* to the vicar-general (c. 368, §2).

We say, saving cases *reserved to the bishop.* This can be done either by the law or by the bishop himself.

The law reserves the following cases to the bishop, and excludes the vicar-general without a special mandate from the bishop, e. g., during a *visitatio ad limina:*

1) To grant letters of excardination and incardination (c. 113);

2) To fill vacant ecclesiastical offices (c. 152);
3) 'Io convoke a synod (c. 357, 81);
To name honorary canons (c. 406, §1);
5) To appoint pastors (c. 455, §3);
f.) To remove parochial vicars of every description (c. 477, 801
To found religious Congregations (c. 492, §1);
g) To erect pious associations (c. 686, 84) ;
9) To reserve sins and censures (c. 893, §1) ;
10) To £rant dimissorial letters (c. 958, §1, n. 2) ;
11) To permit a marriage of conscience (c. 1104) ;
12) To permit the construction of churches (c. 1162, §1);
Ij) To authenticate relics (c. 1283, 82) ;
14) To consecrate sacred places supposing he has episcopal orders (c. 1155);
15) To fix the amount of fees for celebrating Mass in a strange church (c. 1303, §3) ;
16) To erect, unite and confer benefices (c. 1414, 1423, 1432) ;
17) 'I'o inflict ecclesiastical penalties in the strict sense (c. 2220) ;
18) To remit penalties applied perhaps by himself in the exceptional capacity of judge (c. 2236) ;
J9) 4'o absolve from public apostasy, heresy or schism (c. 2314, §2).

The above cases arc reserved by law to the bishop in the sense that the vicar-general needs a special mandate from the ' bishop before he may proceed. Whether a general formula of authorization suffices to give jurisdiction in all the foregoing cases, or whether each case must be specified, is disputed among authors. It is likewise disputed whether the jurisdiction so conferred upon the vicar-general would be ordinary or delegated.

The bishop may, in addition to the powers reserved to him by law, reserve other cases to himself. But these should not be so numerous as to amount to a virtual abolition of the office. For the Code imposes upon bishops that they, as a rule, have a vicar-general (c. 366,81).

Identity of offices—The vicar-general. is said to form one and the same court with the bishop. This is true if the vicar-general is at the same time the Official, in which case no appeal would lie from the sentence of the latter to the bishop, but only to the court of higher instance.

In the exercise of administrative jurisdiction this identity of office and juridical personality is likewise maintained, but not so

perfectly. On the one hand, a favor denied by the bishop can never be granted by the vicar-general; while a favor denied by the vicar-general cannot be validly granted by the bishop so long as the latter is unaware of the vicar-general's action (c. 44* §2). On the other hand, one can take recourse to the bishop from the administrative acts of the vicar-general, e. g., instructions, precepts, denial of favors, etc., provided it is a matter which the bishop himself could reconsider had he acted in the first place.

To preserve unity of action and discipline in the diocese, the Code commands the vicar-general to report all important matters to the bishop which have been done, or should be done, and to abide by his decision (c. 369).

Privileges—The vicar-general takes precedence, next to the bishop, over all the clergy of the diocese, but not over titular bishops, unless he is a titular bishop himself. In the latter case he enjoys all the other honorary privileges accorded to titular bishops (c. 370).

If the vicar-general is not a titular bishop, he enjoys during his term of office the privileges and insignia of a titular prothonotary Apostolic. This entitles him, among other things, to wear a black cassock having an unfolded trail, a silk belt and two pendants; also a black rochet, and mantelleta. He may use the hand-light *(bugia, palmatoria)* at Mass. Often the vicar-general is raised to a higher rank of dignity in virtue of papal induit, being made a monsignor, or member of the papal household, in which case his privileges and insignia are more prominent than those just described (c. 370, §2).

Cessation of jurisdiction—The jurisdiction of the vicar-general expires: 1) by *resignation* of office accepted by the bishop; 2) by *removal* from office; 3) by *vacancy* in the episcopal see. Hence, at the moment of the bishop's death, transfer, etc., the vicar-general also goes out of office, since he and the bishop form one court, or one juridical person. For the same reason the vicar-general's jurisdiction ceases temporarily, i. e., is *suspended,* with the suspension, for any cause, of the bishop's jurisdiction (c. 371).

§2. The Chancellor, Notaries, and the Diocesan Archives (c. 372-384)

The chancellor—The chancellor is a priest whose right and duty it is: 1) to *file* all official documents in the diocesan archives; 2) to *dispose* them in chronological order; and 3) to *index* them.

In addition, the chancellor usually receives *delegated* powers, e. g., to issue dispensations, permissions and other rescripts.

Eveiy bishop must have a chancellor in his curia. If necesary, he may be given an assistant called the vice-chancellor. He is removable *ad nutum episcopi.*

Notaries— By virtue of his office the chancellor is an ecclesiastical notary. In addition, the bishop may appoint other notaries cither with general authority to act in all cases, or in certain kinds of cases, e. g., trials, summary marriage processes, etc., or for this or that specified case.

A notary is a functionary whose rights and duties are: 1) to reduce to writing episcopal enactments of every description, e. g., appointments, regulations, contracts, etc.; 2) to keep an official record or chronicle of the diocesan administration; 3) to produce, for those who have a legitimate right and interest to examine them, the documents of the archives; 4) to draw up and authenticate ecclesiastical documents; 5) to authenticate copies of the original records of the archives.

Notaries may be suspended, or removed, from office at the pleasure *(ad nutum)* of him who created them, e.g., the bishop, the judge, etc.

The diocesan archives— Every bishop must have two archives: a public and a secret archive. All documents not of a defamatory nature which pertain to the spiritual or temporal affairs of the diocese, e. g., Apostolic induits, appointments, contracts, public dispensations, records of confirmation, ordination, etc., should be kept in the public archive. In the secret archive must be kept all documents whose revelation might impair one's good name, c. g., the acts of a criminal trial, records of dispensations granted for the internal extra-sacramental forum, etc.

Documents may be taken out of the *public* archives with the permission of the bishop or vicar-general. Ordinarily such documents must be returned within three days.

§3. Synodal Examiners and Parish Priest Consultors (c. 385-390)

Definitions— A synodal examiner is a priest, chosen in synod, upon whom devolve two duties: 1) to participate in the examinations conducted for testing the fitness of candidates for vacant parishes; 2) to advise the bishop whether he should issue the decree of removal from benefice in the case of irremovable pastors, (c. 2147, j-7·), or removable pastors (c. 2160), non-resident clerics, (c. 2168, *sQ-)› clerici concubinarii* (c. 2176 *sq.),* and negligent pastors, (c. 2182).

Parish priest consultors *(parochi consultores)* are priests, chosen in synod, with the duty of advising the bishop whether the decree of removal advocated by the synodal examiners should be confirmed against the objections of the incumbent in two cases: 1) when an irremovable pastor objects to his removal from the parish (c. 2153); 2) when a *removable* pastor objects to his *transfer* to another parish (c. 2165).

The office of synodal examiner was created by the Council of Trent (sess. 25, c. 10, 18, *de ref.)* for testing the fitness of candidates *for* parishes calling for a competitive examination *(concursus).* Their services must also be employed under the Code for all examinations aimed at testing the fitness of candidates for parishes of any kind. They may, but need not, be employed for other examinations, c. g., in the case of candidates for orders, the junior clergy examinations, etc. The additional duties imposed upon them in reference to advising the bishop concerning the removal of beneficiaries was enjoined by the decree *Maxima cura* of the Consistorial Congregation, Aug. 20, 1910 *(Acta* II, 636).

The office of parish priest consultor first appears in the decree *Maxima cura* just cited.

One must not confuse the synodal *examiners* with the synodal *judges,* who occur in Book IV, and who, appointed in synod, have the duty of sitting in with the Official to form a collegiate tribunal at a formal trial. Nor must parish priest consultors be confused with *diocesan* consultors, whose office will be described below.

Qualifications—The Code decrees nothing concerning the qualifications of synodal examiners and parish priest consultors other than that they should be priests, and that a cleric cannot be examiner and consultor in the *same* case, e. g., to advise whether the decree of removal should be issued and also confirmed, although otherwise he may hold both offices.

The Council of Trent *(l.c.)* permits regulars as well as secular clerics to assume the office of synodal examiner. A decree of the Consistorial Congregation desires that the vicar-general be excluded from the office of examiner (Oct. 3, 1910; *Acta* II, 854). The same decree explains that only pastors must be chosen as parish priest consultors, but these may be religious or secular.

Appointment—Every diocese must have examiners and parish priest consultors chosen in synod, hence the name. The candidates are proposed by the bishop, and voted upon by those taking part in the synod. They should not number less than four, nor more than twelve.

In those dioceses which do not hold synods the examiners and

consultors arc appointed outside of synod by the bishop with the advice of the cathedral chapter, or the diocesan consultors. This procedure is followed also when a vacancy occurs between synods. The clerics so appointed are called *pro-synodal* examiners and parish priest consultors.

Synodal, as also pro-synodal, examiners and parish priest consultors are appointed for 10 years, i. c., from synod to synod. But a pro-synodal examiner and parish priest consultor dates his incumbency from the moment of his appointment outside of synod, where synods arc not held. In the case of a pro-synodal examiner or consultor appointed to fill the vacancy *of* an office before the expiration of the 10 years, e.g., by reason of the death, resignation, etc., of the incumbent, the one so appointed remains in office only for the duration of the unexpired term of his predecessor. One may be reappointed or elected to the office of examiner and consultor repeatedly.

Loss of office— Synodal and pro-synodal examiners, and parish priest consultors lose office: 1) upon the *expiration* of their term; 2) by *resignation* after this has been accepted; 3) by *removal* decreed by the bishop, who, however, needs the advice of the cathedral chapter or the diocesan consultors, and a grave cause is required for the removal.

§4. VICARS-FORANB

(c. 445-450)

Definition— A vicar-foranc is a priest placed by the bishop at the head of a rural vicariate, with the duty of watching over the clergy' and the exercise of the sacred ministry within his district, and reporting to the bishop at stated times on the condition of his vicariate.

A rural vicariate is one of several subdivisions into which the bishop must divide his diocese, each vicariate to comprise a number of parishes. At one time, as we saw, these districts were called rural archpresbyteriates and rural deaconries, and the priest placed over them was called the rural archpriest, or the rural archdeacon. The Code speaks of vicars-forane. In English-speaking countries it has been customary to speak of the *rural dean,* and the *rural deanery,* and this usage may be retained.

Powers of the rural dean— The rural dean has the following rights and duties in virtue of *common* law, namely:

1) To *watch* whether the clerics of his deanery lead a life in conformity' with the sacred canons, and discharge their duties particularly with respect to residence, preaching, catechetical instrue-

tions and the care of the sick; whether the decrees issued by the bishop on the occasion of his visitation are being enforced; whether sufficient attention is paid to the proper matter for the holy Sacrifice; whether decorum and cleanliness are maintained in the churches and their sacred furnishings, especially with regard to the reservation of the Blessed Sacrament and the celebration of Mass; whether the sacred functions are celebrated as prescribed by liturgy; whether ecclesiastical property is carefully administered, and obligations attaching to church endowments, Mass obligations in particular, are faithfully fulfilled; and whether the parish books arc properly written up and conserved;

2) To *visit* the parishes of his deanery at stated intervals, as determined by the bishop, to the end that he may acquaint himself with the conditions above referred to;

3) To *convoke* and *preside* at theological conferences of the priests of his district on the days designated by the bishop;

4) To *provide* material and spiritual assistance to any seriously ill pastor of his deanery, and to see to it that if the priest dies he will receive a decent Christian burial, taking care that the books, documents, sacred furnishings and other church goods arc not lost or carried off, upon the pastor's death;

5) To *report* to the bishop at least once a year on the state of his deanery.

The above powers the dean has in virtue of *common* law. In addition he will have such *delegated* power as the statutes of the diocese, or the bishop may give him. Thus, the Code desires that the rural dean be given faculties to absolve from diocesan reserved cases (c. 899). The dean in some places is also authorized to install all new pastors in his district, to dispense individuals, families and communities from the laws of fast and abstinence, etc.

The jurisdiction of the dean is ordinary and vicarious in those cases where he proceeds in virtue of common law. His is not a purely ministerial function, hut an exercise of administrative jurisdiction, assisting as he does in the enforcement of the law by surveillance, much as the Apostolic Delegate can be said to have ordinary jurisdiction of surveillance. His jurisdiction is delegated in respect to any faculties the bishop, or diocesan law, may confer on him.

Privileges—The rural dean has a right to a seal of his own. He takes precedence over all the clergy of his deanery, provided these can show no cause or title giving them higher rank, hence his title of *dean*. In disputed cases it is the right of the local Ordinary to issue a provisional decree deciding the controversy.

ART. II.

The Episcopal Senate

In the government of the diocese, the bishop, as we said, is assisted not only by his curia, but also by his senate.

The *episcopal senate* may be defined as that body of clerics who: 1) during the occupancy of the see *(sede plena)* have the right and duty to counsel the bishop on matters determined by the common law (cfr. below); and who, 2) during the vacancy of the see *(sede vacante)* succeed the bishop in the government of the diocese (c. 391).

In most countries the episcopal senate is the cathedral chapter. In other countries where the cathedral chapter docs not not exist as with us, the diocesan consultera form the bishop's senate (c. 427).

We shall treat of: 1) the history and organization of the episcopal senate; 2) the office of that senate *sede plena',* 3) the office of the same body *sede vacante.*

§1. History and Present Organization of the Episcopal Senate

A. The Cathedral Chapter (c. 391-422)

Historical notes— In the early ages of the Church, as we have said, the bishop was assisted both in the sacred ministry and the government of the diocese by his entire presbytery. But while the administrative and judicial functions were withdrawn from the presbytery as such and committed to certain individuals in the fourth century, notably the archpriest and archdeacon, it is not certain when deliberative functions were withdrawn from the clerics of the episcopal city as a whole and entrusted to what is now called the cathedral chapter.

The cathedral chapter considered as a body of clerics (canons) attached to the cathedral church with the obligation of reciting divine office daily in choir, *of* celebrating a daily conventual Mass, and of assisting the bishop in pontifical functions, probably took definite shape and became a universal institution only after S. Chrodogang, Bishop of Metz, formulated a rule of common life for the secular clergy. Those who observed the common life were called canons, probably from the fact that they led a life more in harmony with the sacred canons, while as a body they were called a chapter

probably from the fact that they came often together to have a chapter of the rule read to them. Such chapters we find not only at the cathedral church, but at others as well. These latter churches are called collegiate churches of which Santa Maria Maggiore and Santa Maria in Cosmedin in Rome may be cited as examples. Though the secular canons led a life in common without vows, others began to take vows like religious, and these have since been known as *canons regular* in distinction to secular canons. The former constitute a religious organization. In time the secular canons grew weary of the common life, and succeeded in having the common funds divided equally among them. Today the members of secular chapters are still called canons, since they retain some observance of the original rule, e. g., choir, conventual Mass, etc.

Although we do not know at what precise time the cathedral chapters became the exclusive advisory bodies of the bishop, this much is certain that after the eighth century they grew in power and prestige, so much so that by the 12th century they had definitely replaced the ancient presbytery: 1) as the bishop's senate; 2) as the ruling body during the vacancy of the diocese; 3) as the electoral body to choose the new bishop to the exclusion of all other clergy of the diocese.

Present organization—A chapter, whether cathedral or collegiate, may be defined as a college of clerics instituted by the Holy Sec for the purpose of celebrating divine services more solemnly in a church. In addition the cathedral chapter forms the bishop's senate.

By the very nature of their office all canons arc bound to live near their church, though they are not bound to common life. For they have the duty to recite the canonical hours and to attend a conventual Mass daily in choir. Moreover, the cathedral canons must assist the bishop when he pontificates.

In cathedral and collegiate chapters we distinguish between those who have a right to precedence, and these are called *dignitaries,* though the dignitaries may vary in the different chapters, e.g., archpriest, archdeacon, provost, etc., and canons without precedence, who have no special name. Also we have, as not belonging to the chapter with a right to vote, or the obligation of reciting office, etc., various lower beneficiaries and officers as the chaplain, the */nansionarii,* singers, porters, etc. Among the canons proper some have special duties to perform, the more important being those of the *canon theologian* who has the obligation of expounding the Sacred Scriptures, and the *canon penitentiary* who hears confessions in the chapter church with ordinary jurisdiction and with faculties to absolve from cases reserved to the bishop.

Every chapter must be endowed with sufficient revenues to assure a decent maintenance for its members. The salary of a canon is called a *prebend,* and the recipient thereof a *prebendary.* In addition, each canon receives his quota of *daily distributions* as compensation for and inducement to, his attendance at divine services which, therefore, he forfeits by his absence. The revenues of some chapters consist solely of daily distributions.

Ever}· chapter is a *persona moralis collegiatis,* i. e., an ecclesiastical corporation. It may call its own meetings and enact its own statutes without the bishop's permission. But a cathedral chapter has a two-fold corporate existence; as the bishop's senate it has the bishop as its head who convenes it and presides at its meetings in matters relating to the government of the diocese; as a corporate body of its own neither the bishop, nor the vicar general as such, has membership therein, nor the right to vote in purely capitular matters.

Canons take precedence over clerics who are not canons, unless the latter can show some special title to higher rank, c. g-, the vicar-general even if he is not a canon. Moreover, they have a distinct choir dress determined usually by Apostolic induit, but consisting in the main of rochet, mozzetta, cappa and almutium. A few canons may also wear a ring, pectoral cross, purple cassock and even the mitre.

B. Diocesan Consultors (c. 423-428)

Historical notes— The Church desires that cathedral chapters be organized in every diocese. This is evident from the fact that even for missionary countries the Congregation of the Propagation of the Faith has urged their establishment, or restoration, if not in the full sense of the law, then in some modified form. Thus in England, Ireland, Holland, Canada, etc., due to the lack of endowment and the insufficiency of priests, -cathedral chapters of canons exist, with no prebends on the one hand, but on the other hand without the obligation of choir, conventual Mass, assistance at pontifical functions, etc. Hence, these canons can have the charge of souls, since they are not bound to the law of residence in the same sense as regular cathedral canons. They may also wear a distinct garb generally speaking, its form being determined by Apostolic induit. Saving liturgical functions, these cathedral chapters resemble ordinary cathedral chapters in all other respects: they form the bishop's senate, and govern the diocese during a vacancy.

In the United States we have not even the modified form of cathedral chapters. The American Archbishops, who gathered at Rome in 1883 to prepare plans for the III Plenary Council, were urged by the Propaganda to introduce cathedral chapters such as then existed in England, Ireland, Holland, etc., but the American Prelates persuaded the Holy Sec that conditions in this country had not yet permitted the erection of such chapters. As a compromise the HI Plenary Council of Baltimore, in the following year (1884) made it *mandatory* upon every bishop to appoint a board of diocesan consultors, a thing which had obtained in certain of our dioceses through custom, and which had been *recommended* universally by the II Council of Baltimore, but not commanded. The institution of diocesan consultors, which may be called a characteristically American institution, has now been made a part of common law for all those countries and dioceses where cathedral chapters are not to be found.

Organization—Diocesan consultors are a body of clerics who counsel the bishop in certain aises determined by law, and who govern the sec during its vacancy (cfr. c. 427).

They must number not less than six, or in very small dioceses not less than four. They should be priests known for their piety, good character, learning and prudence. They should be secular priests (Pont. Com. Jan. 29, 1931; *Acta* XXIII, 110). They should live in, or near, the episcopal city so that their services may be available (c.425, SI).

Where the diocesan consultors number only a few, say four, it is not advisable that the vicar-general belong to their body lest they lose their independence, since the vicar-general forms one juridical person with the bishop (S. Consist. C., Feb. 27, 1914; *Acta* VI, III).

Diocesan consultors are freely appointed by the bishop for a term of three years. They may be reappointed for an indefinite number of terms, but unless a consultor is reappointed some other cleric must replace him. And such replacements or reappointments must occur every three years. Should a consultor for any reason fail to fill his complete term, e. g., through death, resignation, etc., the bishop, with the *advice* of the other consultors, appoints a priest in his place to hold office for the duration of the unexpired term. The term of office usually expires for all the consultors at the same time, since they are supposed to be appointed in a body at one time. Should that term of three years expire during the vacancy of the diocese, the consultors remain in office until the new bishop takes possession of his office, and until he has provided for a new body

of consultors by replacement or reappointment. But if only one or the other consultor dies or resigns during the vacancy, the diocesan administrator appoints another with the consent of the remaining consultors. One so appointed needs the confirmation of the new bishop to remain in office after the occupancy of the sec (c. 424-426).

A diocesan consultor may not he removed from office before the expiration of his term, save for a just cause. Even so, the bishop must consult and obtain the advice of the other consultors on the removal (c. 428).

The body of diocesan consultors forms the bishop's senate in those dioceses which have no cathedra! chapter. Hence, whatever rights and powers the cathedral chapter has by law, whether *sede plena* or *sede vacante,* the same belong to the diocesan consultors (c. 427).

§2. Powers of the Episcopal Senate *sede plena*

The powers of the episcopal senate during the occupancy of the see arc those of counseling the bishop in the cases where the law calls for their deliberation (c. 391,427). Sometimes the bishop needs only their *advice* to proceed with some business licitly and validly, sometimes he needs their *consent.*

The Code requires only the *advice* of the cathedral chapter, or the diocesan consultors, in the following cases:

1) To appoint pro-synodal examiners and parish priest consultors, i. e., outside of synod (c. 386) ;

2) To remove synodal and pro-synodal examiners and parish priest consultors from office (c. 388) ;

3) To fix the number of prebendaries in chapters (c. 394, §1) ;

4) To appoint titular (real) canons (c. 403);

5) To erect removable parishes, and to declare removable parishes irremovable (c.454, §3);

6) To replace a diocesan consultor who goes out of office before the expiration of his term, or to remove a diocesan consultor (c. 426, §3; 428);

7) To reserve cases outside of synod (c. 895) ;

3) To draw up the schedule of diocesan funeral fees (c. 1234) ;

9) To unite, transfer, divide and dismember benefices, e. g., parishes (c. 1428) ;

10) To order extraordinary processions (c. 1292) ;

11) To appoint to the seminary hoards, and the diocesan board of temporal administration (c. 1359, §2; 1520, §1) ;

12) To decree the penal suppression or transfer of a parish church title (c. 2292).

The *consent* of the cathedral chapter, or diocesan consultons, is required by the bishop:

l) To introduce new prebends in chapters, and to restore former extinct dignities (c. 394, $2) ;

2) To erect confraternities and pious unions in the cathedral church (c. 712, $2);

3) To alienate ecclesiastical goods or property whose value ranges between 1,000 and 30,000 lire, computing the normal gold lira as five to the dollar (c. 1532, §3) ;

4) To lease church property longer than nine years if the value exceed 1,000 lire; or for less than nine years if the value exceeds 10,000 lire, but if the lease is both beyond nine years and its value exceeds 30,000 lire, an Apostolic induit is necessary (c. 1541, §2).

§3. Powers of the Episcopal Senate *sede vacante* (c. 429-444)

During the vacancy of the see the government of the diocese nasses to the cathedral chapter or the diocesan consulter*, unless in some oarticular case the Holy See shall have ruled otherwise (c.431).

Vacancy of the see defined (c. 430)— I he vacancy of the diocese must not be confused with the obstruction of the diocese *(sede impedita).* The latter condition is verified when the bishop is impeded from communicating with his people and governing the diocese even by letter because of exile, captivity or some other incapacity, e.g., mental infirmity. In that case the vicar-general, or some cleric appointed by the bishop for such contingency, takes charge. 'I'he bishop may appoint several clerics to succeed one another, where necessary. If all these clerics are similarly impeded, the rules governing the *vacancy* of the diocese obtain (c. 429).

Neither is the diocese vacant, but only impeded, when the bishop's jurisdiction is suspended. If the suspension is public, the Holy See must be informed thereof by the archbishop, or if the latter is the bishop under suspension, by the senior bishop of the province. Naturally, the vicar-general cannot take charge here, because his jurisdiction is suspended simultaneously with that of the bishop (c. 429).

The diocesan see, then, becomes vacant: 1) through the bishop's *death;* 2) *resignation* ; 3) *transfer* to another diocese; 4) *privation* of office. But neither the resignation becomes effective before notice of its acceptance by the Sovereign Pontiff has been received, nor the removal or transfer before the bishop receives

notice thereof. Consequently, any acts performed by the bishop or vicar-general before receiving the notices described are licit and valid, saving the conferment of offices and benefices. The same holds good before the vicar-general receives notice of the bishop's death. In the event of a transfer the diocese, upon the issuance of the Apostolic Letters of transfer, does not become vacant until the bishop takes canonical possession of his new see and, until such time, he retains in the former diocese the powers of a vicar-capitular or diocesan administrator (c. 430).

J'icar-capitular and diocesan administrator—Within 8 days after being notified of the vacancy of the see the cathedral chapter must elect a vicar capitular, and the diocesan consultors a diocesan administrator, who will govern the diocese in their stead (c. 432). This *diocesan* administrator must not be confused with the *Apostolic* Administrator described above.

The powers of the vicar-capitular and the diocesan administrator are identical with those of the bishop in matters spiritual and temporal save where the law makes restrictions. They are local Ordinaries in the sense of c. 198, and therefore, whatever powers the Code accords to local Ordinaries must be considered as belonging to the vicar-capitular and the diocesan administrator unless the contrary is stated in the law (c. 435).

While neither the cathedral chapter can restrict the powers of the vicar-capitular nor the diocesan consultors those of the diocesan administrator, by reserving certain rights to themselves, yet restrictions arc placed upon those officials by common law.

Since their authority is only transitory, they must observe the rule: *sede vacante nihil innovetur.* The Code at various places is explicit with regard to certain restrictions, and from these we can gather to some extent what otherwise might be included under the prohibition *sede vacante nihil innovetur.* In particular, the vicar-capitular and diocesan administrator are forbidden:

1) To carry away, destroy, conceal or adulterate the documents of the episcopal curia (c. 435, S3);

2) To convene a synod, or to enact extra-synodal laws, although transient instructions, regulations and precepts are permitted (c. 357);

3) To create honorary canons (c. 406, §1);

4) To declare removable parishes irremovable (c. 454, §3);

5) To establish religious Congregations (c. 492, §1);

6) To erect pious associations (c. 686, §4) ;

7) To reserve cases to themselves (c. 893, §1) ;

8) To unite parishes (c. 1423, §1) ;

9) To permit an exchange of benefices (c. 1487, $1);

10) To remove the promoter of justice or the defender of the bond (c. 1590, §1);

11) Before the sec has been vacant a year: 1) to grant dimissorial letters unless there is urgent need; and 2) letters of incardination and excardination; 3) to confer vacant parishes of free appointment (c. 958, § 1, n. 3; c. 113; c. 455, £2, n. 3). But they can appoint parochial vicars of every description, and remove them from office (c. 455, §1; c. 477, §1). They may, with the *consent* of the remaining diocesan consultors, appoint *temporarily* a cleric to replace a diocesan consultor who has died or resigned during the vacancy of the see (c. 426, §5).

Saving the above exceptions, the powers of the vicar-capitular and diocesan administrator are identical with those of other local Ordinaries, but to proceed licitly and validly they require the advice or consent of the cathedral chapter, or the diocesan consultors in the same cases as the bishop (cfr. p. 257-258).

Loss of office—The vicar-capitular and diocesan administrator lose office:

1) By *removal* decreed by the Holy See;

2) By *resignation* manifested in authentic documentary form to the cathedral chapter or diocesan consultors, as the case may be, nor is the validity of such resignation made to depend upon its acceptance by the cathedral chapter in the one case, or the diocesan consultors in the other.

3) By canonical possession of the see by the new bishop (c. 443, §2).

Chapter VI

THE BISHOP'S ASSISTANTS IN THE SACRED MINISTRY

Bishops arc assisted in the government of the diocese by the officers of the diocesan curia and by the cathedral chapter or the diocesan consultors.

In addition to the powers of government which constitute the episcopal office, i. c., the duty of watching and guarding their flock, bishops have the duty of *feeding* their flock, and this constitutes the *priestly* office.

The episcopal office is discharged through the exercise of *jurisdiction* alone, the priestly office mainly through the exercise of the power of *orders.*

In virtue of their episcopal or pastoral office bishops *govern* the faithful ; in virtue of the priestly office they *sanctify* the faithful.

The fullness of the priesthood, i. c., the fullness of the power of orders, has been conferred upon bishops to the end that they might sanctify souls through the preaching of the gospel, the administration of the sacraments, the offering of the Holy Sacrifice, and the performance of other acts of public worship. The exercise of these acts and functions constitutes what is known as the *care (cura) of souls,* or the *sacred ministry,* for it is thus, rather than through the enactment and enforcement of laws *(power of government),* that souls are *directly* taken care of, and their *spiritual* needs are ministered to.

It remains to speak in this chapter of those clerics who assist the bishop in the *sacred ministry.* These are: 1) pastors; 2) parochial vicars; 3) chaplains.

ART. I.

Pastors

History of parishes— In the first three centuries parishes did not exist, for the simple reason that Christians were found almost exclusively in the episcopal city. There the bishop was the sole

pastor; he alone baptized, preached, celebrated Holy Mass and otherwise conducted divine services. In these functions, it is true, he was assisted by his presbytery, the priests, deacons and lower clergy, hut these acted as the bishop's ministers, and always in the cathedral, there being no other churches.

With the cessation of persecutions we find the Christians increasing in numbers. And while this did not necessitate as yet the erection of parishes in the episcopal city, by this time we see the faithful in villages and hamlets outside the episcopal city with their own churches and resident clergy. These had authority to say Mass, baptize, absolve from sins, administer Holy Communion and Extreme Unction, bless marriages, preach, and conduct public worship in general. In other words, we have pastors and parishes in the country sections by the fourth century.

In the episcopal city, churches other than the cathedral were constructed by pious Christians, and in these there were resident clergy for the celebration of Mass and other acts of devotion. But the conferring of baptism and most other sacraments was still reserved to the bishop. In fact, it is not until the 11th century that we find the parochial system introduced in the episcopal city itself.

§1. Pastor Defined

In the fullest sense of the word only the bishop may be called the spiritual *pastor,* for he by original and divine right, both watches and feeds the flock, both governs and sanctifies them. Custom, however, has given the title pastor to certain clerics other than bishops. These may be called pastors only in a limited sense, since they do not rule but only sanctify. In this latter sense, a pastor may be defined as a *priest, or moral person, upon whom as its proper titular, a parish has been conferred with the care of souls, to be exercised under authority of the local Ordinary* (c. 451).

We say, 1, a *priest.* Hence, the pre-Codc law has been abrogated in virtue of which a parish could be conferred upon a lower cleric on condition that he receive holy orders within a year.

We say, 2, a *moral person.* Such a corporation could be a chapter of canons, a religious Order or Congregation, an independent monastery, etc. In these cases, as we shall sec, the corporation is the *habitual* pastor, and they must choose a priest as their vicar who will be the *actual* pastor.

We say, 3, to whom a *parish* has been given. Canon 216 defines a parish as a portion of the diocese with its own church and determined group of faithful, and with its own rector who acts as pastor

with the duty of caring for souls. Similar divisions of a vicariate and prefecture Apostolic are called quasi-parishes, and their rectors are called quasi-rcctors. Hence, canonical parishes and canonical pastors exist only in dioceses. And while ordinarily parishes are territorial, being circumscribed by territorial limits, so that all the faithful living within those limits arc by law the pastor's subjects, still the Code admits national, language and family parishes, so that the rectors in charge of the faithful by reason of nationality, language, etc. are pastors in the true sense of the word, no less than pastors of territorial parishes.

We say, 4, upon whom as its proper *titular* a parish has been conferred. This clause is added to distinguish pastors from certain classes *of* parochial vicars who, while they have all the rights and duties of pastors, e. g., the administration of a vacant parish, yet govern the parish in *administrationem,* not in *titulum,* and can be removed, without the need of any trial or canonical cause, by the mere appointment of a real pastor.

We say, 5, with the *care of souls.* Pastors are the assistants of the bishop in the sacred ministry, not in the government of the diocese. As such, then, they have no jurisdiction in the external forum. For the discharge of their office it suffices that they have priestly orders and a certain measure of jurisdiction in the *internal* forum, as we shall see. If a pastor assists the bishop in the government of the diocese, c. g., as vicar-general, chancellor, diocesan consuitor, etc., this is by special appointment, and not in virtue of the office of pastor.

We say, 6, to be exercised *tinder authority of the local Ordinary.* The bishop, notwithstanding the parochial system now obtaining, and which is of ecclesiastical law, still retains the title and authority of universal pastor of the whole diocese by original and divine right. Therefore, he can exercise any and all acts of the sacred ministry in any parish of the diocese without consent of the local pastor. This he may do also through his delegate. For pastors are in a sense only the vicars and assistants of the bishop; their authority is vicarious or derived, since by divine law only the Roman Pontiff and residential bishops possess original powers in the Church. However, the pastor is not the bishop's vicar in the sense that he is his delegate. For the jurisdiction of pastors is ordinary, being attached by common law to their office. And so the rights of pastors cannot be restricted as defined by the common law, because the office of pastor is an institution of papal, not local law.

Although, as was said, and explained, quasi-pastors and certain parochial vicars are not pastors, yet because they possess all the

rights and duties of canonical pastors, whenever the law speaks of pastors we must understand this term as including quasi-pastors and parochial vicars who happen to have full parochial rights, unless the contrary is expressly stated (c. 451, §2).

§2. Pastors and Parishes in the United States

In this country we had no canonical parishes and no canonical pastors prior to the promulgation of the Code, saving very few exceptions in Louisiana and California. This condition was due either: 1) to the absence of well defined parish limits; or 2) to the absence of irremovable pastors; or 3) to the absence of real estate endowments necessary to constitute benefices. All three of these conditions were considered essential under prc-Codc law to have a canonical parish. And so, while in some cases we may have had irremovable rectors, and in other cases well defined limits, always the element of *benefice* was lacking.

The Code has introduced certain innovations in virtue of which our parishes are now canonical parishes, and our pastors canonical pastors, without exception. No longer is irremovability required in the pastor, as we shall see. Nor for the erection of a benefice must the endowment for the beneficiary consist of revenues derived from real estate, but it suffices that the beneficiary be assured of decent maintenance through the voluntary contributions of the faithful, in the way pastors have always been supported in this country. All that remains is that a parish have fixed limits and boundaries. Where these limits have not been determined by the Ordinary, they should be so determined, and, until such time, the lines fixed by custom suffice. Eor if custom has no such force, then one knows not what to call those entities. They cannot be called quasi-parishes, for these exist only in vicariates and prefectures Apostolic (c. 216). If certain churches cannot be erected into independent parishes because of their poverty, or for other reasons, they must be made to depend upon some neighboring parish, and then they will be called subsidiarj- churches, or chapels of case. The divisions of a *diocese* for the care of souls can now have but one name, that of *parishes.* (Consistorial C., Aug. 1, 1919; *Acta* XI, 346).

A declaration to the effect that our parishes are canonical ones was explicitly given by the President of the Pontifical Committee, Cardinal Gasparri, to our Apostolic Delegate under date of Sept. 26, 1921 (Bouscaren, o. *c.* I, 149). The declaration was subsequently transmitted to all the bishops of the United States, but, being of local interest only, was not inserted in the *Acta.* The Cardinal

takes occasion to remark that the quasi-parishes of pre-Code days became *ipso facto* canonical parishes upon the promulgation of the Code, and that a special decree of the Ordinary to this effect was not required, provided the quasi-parishes in question had the Code requisites of a parish, namely, a priest with title to the parish, a Stable revenue though consisting only of free-will offerings, and fixed boundaries.

It follows from what has been said that the title of *rector* for the priest in charge of a parish is no longer admissible in this country, but that of *pastor* is proper. Also so-called rectories might henceforth be called *parish houses,* or the *pastor's residence.* The Code reserves the name of *rector* for the priest who has charge of a non-parochial church (c. 479j<7·). Of such churches there arc extremely few in the United States due to our missionary conditions.

§3. Appointment of Pastors

The appointment of pastors belongs to the bishop, not the vicar-general, without a special mandate. The vicar-capitular (diocesan administrator) can appoint pastors after a year's vacancy in the diocesan see (c.455).

Bishops cannot, however, appoint to vacant parishes reserved to the Holy See. These are listed in c. 1435, the more important reservations being those parishes whose incumbent died at Rome, or whose pastor belonged to the Pontifical Household, as in the case of monsignors, or whose incumbent was appointed to a bishopric. But the Apostolic Delegate has faculties to confer such parishes.

Otherwise, in the United States there is neither the right of patronage, not that of nomination, to limit the bishop's right of free appointment to parishes, as often happens in other countries, and in virtue of which the bishop can merely grant canonical institution.

Only in the case of parishes entrusted to *religious* has the religious superior the right to *present* the candidate for the parish, and the bishop has the right to *approve* of the choice, thus giving canonical institution (c. 456).

As a rule, vacant parishes should be filled within six months, like any other ecclesiastical office. But here the bishop is allowed to defer the provision beyond six months if in his judgment circumstances so warrant. In the meantime an administrator is appointed (c. 458).

Not more than one pastor can be appointed to a parish. Neither can one priest be appointed to two or more parishes, these being

incompatible offices. But a priest can hold title to one parish, while acting as administrator of another parish (c. 460).

§4. Removal of Pastors

In virtue of their office pastors ought to enjoy a certain degree of stability, so that, like their Divine Model, they may become so intimately acquainted with their sheep that they can say: *I know mine and mine know me.*

But stability need not imply irremovability, and it admits of degrees. Irremovable pastors have naturally greater stability of office than removable pastors. The Code in admitting the distinction between these two kinds of pastors automatically acknowledges that canonical parishes can exist with removable pastors at their head (c.454, §2).

Irremovability and removability arc relative terms and have a technical meaning. 'That a pastor is irremovable docs not imply that he cannot be removed for any cause until death. Nor because a pastor is removable can he be transferred, or removed from office, at the bishop's good pleasure, at least in the case of secular pastors.

But religious pastors arc always removable at the good pleasure *(ad nutum)* of the bishop, the religious superior being previously notified. So, too, the religious superior may remove the pastor at his good pleasure *(ad nutum),* the local Ordinary being previously notified. Neither the superior, nor the Ordinary, needs the consent one of the other. But in the event of disagreement, recourse lies to the Holy See *in devolutive,* the removal taking effect at once (c.454, §5). And the good name of the pastor cannot be allowed to suffer despite the term *ad nutum.*

Secular pastors arc never removable *ad nutum,* whether they arc removable or irremovable. Always a canonical cause is required, and some sort of canonical procedure, the degree of formality involved in the procedure differentiating irremovable from removable pastors. Both can be *removed for administrative* reasons, e. g.. incompetency, old age, ill-will of the people, etc., but a longer administrative procedure is required in the case of irremovable pastors. Both can likewise be removed for *criminal* charges, and if these charges arc non-residence, concubinage, or neglect of pastoral duties, an administrative procedure suffices. Finally, an irremovable pastor cannot be transferred against his will administratively without

sanction of the Holy See, while a removable pastor can be transferred against his will, although an administrative procedure is required. For these procedures in greater detail, cfr. 653 ff.

The Code desires that irremovability be regarded as the *normal* characteristic of every canonical parish (c. 454, 1). It declares that those which are now irremovable cannot be made removable without an Apostolic Induit. It further states that for declaring a removable parish irremovable the decree of the bishop suffices, after *consulting* with the cathedral chapter (diocesan consultors). And all parishes to be erected after the Code must be irremovable, unless the Ordinary, again consulting with the above bodies, decrees that they be removable (t. 454, §3).

The HI Plenary Council of Baltimore ordained, under n. 33, that one-tenth of the parishes in every diocese be declared irremovable. This ordinance may now be ignored, and. as was said, the bishop can erect removable parishes indefinite in number. But parishes which were irremovable at the time of the Code cannot be declared removable by the bishop without Apostolic induit, as said in the preceding paragraph.

§5. Qualifications Required in Pastors

For *validity* the pastor must be a priest. For *licitness* he must he a man of good morals, and gifted with knowledge, zeal for souls, prudence, and all other virtues and qualities which common or particular law requires for the pastoral office (459, §2).

Those who possess the above qualifications in a more eminent degree are to be preferred, i.c., the worthier candidate (c. 459, §1)· To arrive at this knowledge the bishop may have to consult the diocesan archives, and, if necessary, gather even secret information concerning the candidate's *moral* virtues, (c. 459, §3, n. 1).

Concerning the candidate's *intellectual* ability, i. e., his learning, the Ordinary must take into consideration the results of the examinations which the candidate underwent for three years subsequent to his ordination (cfr. c. 130). Moreover, a special examination previous to the appointment must be taken by the candidate in the presence of the bishop, and conducted by the synodal examiners (c. 459, §3, n. 3). In our country it seems to be the custom to dispense from this special examination, and to rely solely upon the success of the examinations taken by the cleric during his seminary years. This will suffice, provided said examinations covered the matter which ordinarily is the subject of the special examinations to ascertain a candidate's fitness for a vacant parish

(Code Comm., Nov. 24, 1920; *Acta* XII, 574). Nor is the special examination required in transferring to another parish, provided the transfer docs not take place at the pastor's suggestion (Code Comm. *ibid.*).

The Code renews the law of Benedict XIV *Cum illud,* Dec. 14, 1742, which required a competitive examination *(concursus)* in the case of appointment to *irremovable* parishes (c. 459, §4). The concursus differs from the simple examinations, spoken of thus far, in that the results of the examinations are the sole factor in determining the *worthier* candidate, so that one who obtains the highest marks is strictly entitled to the parish. The III Plenary Council of Baltimore (n. 36) required the concursus for all irremovable rectorships. But a private answer transmitted by the Consistorial Congregation to our Apostolic Delegate under date of June 24, 1931 abrogates this ruling of the Baltimore Council, and declares that for appointments to parishes in this country, whether removable or irremovable, the simple examination described in c. 459, §3 will suffice. (Cfr. Bouscaren, o. c. vol. I, p. 249).

Installation (c. 461). The appointment to a parish becomes effective from the moment of taking canonical possession of the benefice. Before the installation, the new pastor must make the profession of faith according to the formula found at the beginning of the Code. Moreover, until the Holy See rules otherwise, the oath against Modernism must be added, the formula of which is found in the *Aeta Apost. Sedis,* II, 669 (H. O., Mar. 22, 1918; *Aeta X,* 136).

The manner of installation the Code leaves to particular law or custom, in accordance with c. 1444. In many European countries the pastor is installed by the bishop, or the rural dean. Where formal installations arc not observed, as with us, generally speaking, the appointment becomes effective from the first moment of the actual exercise of the office.

If a priest docs not take possession of his parish within the time set by the Ordinary, the latter is free to declare the parish vacant (c. 1444, §2).

§6. Rights of Pastors

In virtue of their office pastors have all powers requisite for the proper care of souls, and the administration of the parish. Hence, without further delegation, and in virtue of their appointment alone, pastors may preach, administer all sacraments, saving confirmation and orders, celebrate Holy Mass, administer sacramentals not reserved to bishops, and conduct public worship.

In the administration of certain sacraments and sacramentals pastors have rights jointly with other priests, e. g., sacramental absolution, private distribution of holy communion, etc. But with respect to other sacraments and sacramentals, pastors have exclusive authority. Such functions which arc reserved to pastors may he called *pastoral,* or *parochial* rights. For the licit exercise of these functions there is evidently required, in addition to the power of orders, a certain measure of jurisdiction in the internal forum which is possessed by pastors alone, but which, being ordinary, they may delegate to others. But these functions cannot be exercised outside of the parish, nor generally in favor of non-parishioners even in the parish. However, a pastor may hear the confession of his subjects in any part of the world, and the confession of all penitents within his parish.

Within his territory, wc say, a pastor may exercise pastoral rights with regard to his subjects. Now the subject of a pastor, i.e., his parishioner, is a person who has a domicile or quasi'domicile in the parish, or in the case of *vagi* who have nowhere a fixed abode, these are a pastor's subjects as long as they are staying in his parish (c. 94). But certain persons, while having domicile or quasi-domicile in the parish, arc not parishioners, namely: 1) those religious who enjoy episcopal exemption by common law; 2) religious and pious houses which, though not exempt by common law, have been exempted from the jurisdiction of the pastor by Apostolic induit, or episcopal decree, and these will be exempt to the extent described in the decree of exemption, or the faculties of their chaplain; 3) the diocesan seminary; 4) nationals, i.e., those who belong to a national or foreign-speaking parish (c. 464, 1368).

With this premised we shall see what functions arc reserved to pastors.

Pastoral, or parochial rights— These are listed in c. 462, namely:

1) To confer *solemn* baptism. Hence, private baptism is not reserved, and it can be given by any priest in a case of emergen^', e. g., in a hospital. Nor can the pastor baptize his subject outside of the parish, as was said. In this case the local pastor may baptize the *peregrinas* solemnly when it is difficult for the latter to go, or be taken, to his proper parish (c. 738, 739) ;

2) To carry the Blessed Sacrament *publicly* to the sick in his parish. This custom docs not prevail with us. Communion may be taken privately to anyone by any priest in any parish (849). And this priest, if he has the general faculties of the diocese, may hear the confession of the communicant;

3) To take *Holy J'iaticum* and administer *Extreme Unction*

to the sick in the parish. While private communion for the sick outside of danger of death is not reserved, *Viaticum* is reserved, even when administered privately. A few cases are excepted: 1) Viaticum and Extreme Unction administered to the bishop, this right belonging to the first dignitary of the cathedral chapter (c. 397, n. 3); 2) in clerical religions it belongs to the superior (c. 514, §1); 3) in a monastery of nuns with solemn vows to the ordinary confessor, or his substitute; (c. 514, §2); 4) in other lay religions to the chaplain (c. 514, §3); 5) in case of necessity the right belongs to any priest (c. 938, §2).

4) To announce sacred ordinations and the banns of marriage.

5) To assist at marriages, and pronounce the nuptial blessing. For *validity* the pastor must assist within his own territory; for *licitness* the parties must also be his subjects, at least the Catholic bride. Hence, to assist at a marriage outside of his parish, even though both parties are his subjects, would be invalid, without permission of the local pastor (c. 1094, 1097).

6) To conduct funerals. Persons who die outside of their parish must be taken to their proper parish church for burial if this can be done conveniently and without expense. Even though this be true, namely, that the funeral can easily be conducted from the proper parish of the deceased, yet anyone, saving religious, may designate the church of his funeral, but the choice need not be presumed by the proper pastor, who can insist upon legitimate proof. The survivors are not permitted to choose a church of funeral other than the proper parish, supposing the absence of inconvenience.

7) To bless houses on Holy Saturday. With us this custom is not observed except in some foreign-language parishes. The blessing of houses outside of Holy Saturday would not be a pastoral and reserved right.

8) To bless the baptismal font on Holy Saturday.

9) To conduct public processions and impart solemn blessings *outside* of the church.

The above is an exhaustive list of pastoral (reserved) rights. From the silence of the Code it follows that certain functions, which might otherwise appear to be so, are not reserved, and can be performed by priests other than pastors, namely: 1) high Masses; 2) the preaching of sermons, although episcopal approval is required; 3) Easter Communion, and so the faithful may make their Easter duty in any parish, or church, but they ought to be encouraged to discharge this obligation in their parish church (c. 859); 4) First Communion, whether received privately or publicly, although the pastor is entitled to judge the fitness and proper dispositions of all

first communicants (c. 854, §5) ; 5) the functions of Holy Week including Mass on Holy Thursday; 6) the blessings on Candlemas Day, Ash Wednesday and Palm Sunday; 7) the churching of women ; 8) benediction with the Blessed Sacrament.

Neither are the faithful bound to hear Mass on Sundays and holydays in their proper parish. However, they are not released from the duty of supporting their pastor and parish church.

Salary and stole fees—On the principle enunciated by St. Paul that: *they that serve the altar partake with the altar, and they that preach the gospel should live by the gospel.* (I Cor. IX, 13-14), every pastor is entitled to a just compensation for his services.

As the holder of a benefice the pastor has the right to the revenues from his benefice endowment (c. 1473). With us, revenues and endowment arc one and the same thing,, consisting of a fixed salary derived from the free-will offerings of the faithful. Each bishop determines by diocesan law the salary of the pastors (III Plen. Cone. Bait. n. 273).

In addition to his salary, the pastor is entitled to those stole fees which have been sanctioned by custom, or by legitimate taxation of the provincial council (c. 463, §1). With us, stoic fees may be expected for baptisms, marriages and funerals, but in the case of the poor these must be given gratuitous service (463, §4). In the case of the other sacraments no fee may be *exacted,* but donations spontaneously proffered may be accepted, save offerings made on the occasion of sacramental confession.

The stole fees belong to the pastor, even though another priest, e. g., the assistant, performed the service. However, the excess of the ordinary fee may be retained by the minister in this case, provided the intention of the donor to this effect appears explicitly, e.g., by his statement, or implicitly from circumstances, e.g., the donor is the priest's relative, it is the priest's birthday, namesday, etc. (c. 463, §3).

Dispensing and absolving powers—In virtue of his office the pastor has no special dispensing powers save these: 1) to dispense from the law of fast, abstinence and the observance of holy days with respect to either individuals or families, but not the whole parish (c. 1245, §1) ; 2) to dispense from marriage impediments in danger of death, and in otherwise urgent cases, if time docs not permit of recourse to the Ordinary, and other circumstances are verified as described in c. 1043-1045. In both cases strangers *(peregrini)* may benefit by his powers.

Neither has the pastor, in virtue of his office alone, special powers to absolve from sins and censures, save one case, namely,

to absolve during the Easter season from all *diocesan* reserved sins (c. 899, §3).

If pastors have other dispensing and absolving powers, which are not possessed by the ordinary priest, this is in virtue of delegated faculties, which they may have received from the Holy See, the bishop, or the diocesan statutes.

Vacation—Every pastor has the right to an annual vacation of two months, to be taken continuously or interruptedly. However, the Code allows the local Ordinary to lengthen or shorten this vacation period for a just cause. With us, due to the scarcity of priests who are available to supply, very few pastors are allowed annually a vacation of two months (c. 465, §2).

Management of parish—Every pastor has the power of administration in regard to his parish. In respect to administration a parish may be viewed: 1) as a church; 2) as a benefice; 3) as a non-collegiate moral person with property rights.

Insofar as the parish is a church, the pastor has exclusive jurisdiction in the following matters: 1) the admission of outside priests who wish to celebrate Mass or conduct other divine services; 2) the enforcement of sacred liturgy in the celebration of divine services; 3) the fixing of the hours of services and the determination of the various devotions; 4) the supervision of whatever pertains to collections, announcements, the arrangement of altars, communion rail, pulpit, organ, seats and pews, ottering boxes, the adornment of the church, the admission and rejection of sacred vessels, utensils or other sacred furnishings; 5) rhe writing and safe-keeping of parish books; 7) the appointment of sacristan, singers, organist, servers, janitor, etc. (c. 484, 1184-1185).

Insofar as the parish is a benefice, the pastor has the right to gather the revenues from the endowment, and administer the endowment funds or property. With us, this cannot ordinarily be exercised; the pastor simply draws his salary from time to time out of the collections, there being no real estate constituting the capital (endowment) from which his salary is taken.

Insofar as the parish is a corporation vested with property rights, the pastor is the administrator of its temporalities (c. 1476). The pastor is not the owner of parish property, and all contributions, whether in the form of pew rent, seat money, collections, subscriptions, etc. belong to the parish, the pastor being permitted to draw only his salary therefrom. Canons 1518-1528 speak of the duties of administrators in general, and in various places the Code lays down more explicit rulings, e. g., concerning the necessity of observ-

ing the civil law in the making of contracts (c. 1529) ; the prohibition against the alienation of ecclesiastical goods and property beyond certain limits (c. 1532) ; the administration of funds given the pastor in trust (c. 1516-1517) ; the making of donations from parish goods (c. 1535); the acceptance and refusal of donations (c. 1536); the contracting of mortgages and other debts (c. 1538) ; the leasing of church property (c. 1541-1542) ; the filing of deeds and other legal papers connected with property rights (c. 1523, n. 6); the keeping of a record of income and expenditures (c. 1523, n. 5) ; the submitting of an annual financial report to the bishop (c. 1525) ; the need of previous permission of the local Ordinary to institute a lawsuit in the name of the church (c. 1526) ; the invalidity of acts exceeding the bounds of ordinary administration (c. 1527), etc.

Every pastor ought also to consult particular ecclesiastical legislation, especially the diocesan statutes, on the administration of church property. Uually what is vague and general in the common law will receive greater specification in the statutes, e. g., as to what sum constitutes an excess of the ordinary administration, for which previous permission must be obtained.

In the United States, moreover, since practically every parish is in one form or another incorporated under the laws of the respective states, the pastor and bishop must he guided by the charter of incorporation in order that their acts may be legally protected in the civil courts.

§7. Obligations of Pastors

These may be reduced to: 1) the care of souls; 2) the obligation of residence; 3) the application of Mass for the people; 4) the keeping of parish books; 5) the administration of the temporalities of the parish. Concerning this last point we have already spoken.

Care of souls—The care of souls, or the sacred ministry in the strict sense, comprises the following duties, which we briefly enumerate, since they receive more elaborate treatment in manuals of moral and pastoral theology, namely:

1) To celebrate Holy Mass, and to conduct other services prescribed by liturgy and canon law (c. 467, §1) ;

2) To administer the sacraments to the faithful whenever these ask for them legitimately (c. 467, §1);

3) To preach the word of God on Sundays and holydavs of obligation (c. 1344) ;

4)' To become personally acquainted with his parishioners, so that as a true shepherd he can, like Christ the Good Shepherd, say: *I know mine and mine know me* (c. 467, §1) ;

5) To prudently correct the erring; hence, privately at first, then before two witnesses; finally, publicly if this be necessary to avoid or repair scandal, but safeguarding himself from the possibility of defamation of character and subsequent lawsuits (c. 467, §1);

6) Like the Divine Master Himself, to take a personal interest in the poor and the unfortunate (c. 467, §1);

7) To care for the sick, especially the dying, with the utmost zeal and charity, administering to them the sacraments and commending their souls to God. In danger of death the pastor, or any priest who assists the dying, may and should impart the Apostolic Blessing with a plenary indulgence (c. 468) :

8) To employ great diligence in instructing the children in the Catholic faith ; hence, the need of setting aside some convenient time for catechetical instructions for the children, especially where a parish has no parochial school (c. 467, §1);

9) To promote works of charity, faith and piety, c. g., through the establishment of confraternities and pious unions in the parish (c. 469).

Law of residence—That the pastor may attend to the care of souls properly, the law obliges him to live in the parish, and near the parish church (c. 465, §1). Concerning his annual vacation we have already spoken.

When the pastor leaves the parish, whether on vacation or for any other reason, if his absence will extend beyond a week, hr must obtain previous written permission from the local Ordinary. When requesting this permission, the pastor must at the same time inform the local Ordinary of the name of the priest who will supply during his absence. If the Ordinary approves of the choice, the priest becomes the vicar-substitute, concerning whose powers more will be said on p. 279 (c. 465, §4).

Should it be necessary for the pastor to depart hurriedly so that he has no time to hear from the local Ordinary, he must at once write to the Ordinary telling the reasons for his departure, and naming the priest whom he intends as a substitute. Unless and until the priest so chosen is notified by the chancery to the contrary, he may act with all the powers of a vicar-substitute, the Code itself giving the priest under these circumstances the powers of such a vicar (c. 465, §5).

For absences lasting less than a week, the permission of the Ordinary is not required. But even here the pastor should see to it that the faithful are provided for, especially in a case of emergence, c. g., by arranging with them and the neighboring pastor (c. 465, <6).

Missa pro populo—Besides all Sundays, bishops and pastors must apply Mass for their respective subjects on the following days: (S. C. Council, Dec. 28, 1919; *Acta* XII, p. 42): 1—The Feast of the Circumcision; 2—Epiphany; 3—Purification of the B. V. M. (Feb. 2); 4—St. Mathias (Feb. 24); 5—St. Joseph (Mar. 19); 6—Annunciation (Mar. 25); 7, 8—Monday and Tuesday after Easter; 9—Sts. Philip and James (May1); 10—Finding of the Cross (May 3); 11—Ascension Day; 12—Corpus Christi; 13, 14—Monday and Tuesday after Pentecost; 15—St. John Baptist (June 24); 16—Sts. Peter and Paul (June 29); 17—St. James (July 25); 18—St. Anne (July 26); 19—St. Lawrence (Aug. 10); 20—Assumption (Aug. 15); 21—St. Bartholomew (Aug. 24); 22—Dedication of St. Michael Archangel (Sept. 29); 25—Sts. Simon and Jude (Oct. 28); 26—All Saints' (Nov. 1); 27—St. Andrew (Nov. 30); 28—Immaculate Conception (Dec. 8); 29—St. Thomas, Apostle (Dec. 21); 30—Christmas Day; 31—St. Stephen (Dec. 26); 32—Holy Innocents (Dec. 28); 33—St. Sylvester (Dec. 31); 34—Patron of country (in the United States this is the Immaculate Conception); 35—Patron of the place (in this country we have no patrons of cities, towns, etc.). Cfr. c. 466, §1.

If a pastor is at the same time administrator of one or more other parishes, he need apply only one Mass for the people on the above days (c. 466, §2).

If some impediment hinders the pastor from applying Mass on the day assigned, e. g., he has a funeral, he may have it applied through another priest, e. g., the assistant, giving the lattci, of course, the usual low Mass stipend, or postponing the obligation until the next free day.

The pastor should apply the Mass personally, when at all possible. However, since the obligation is also local, i. e., the Mass should be said if possible in the parish church (c. 466, §4), should the pastor be absent, he may apply the Mass himself away from the parish church, or have it said in the parish church by another priest. The personal and the local obligations are of equal force, and neither prevails over the other (c. 466, §5).

The *Missa pro populo* need not be the high Mass, nor the parish Mass.

The day assigned for the *Missa pro populo* is determined *ad urgendam,* not *ad finiendam obligationem.* Therefore, Masses not said on the fixed days must still be supplied.

The Mass for the people is due the congregation *ex justitia.* If, therefore, the pastor happens to binate on these days, he may not

accept a stipend for the second Mass, saving an Apostolic induit. Much less may he accept a stipend for the *Missa pro populo.* But some compensation may be accepted for the second Mass *ex titulo extriuseco,* namely, by reason of labor and inconvenience, as where the pastor would say a second Mass in another parish, to supply for the pastor of that place.

Parish books— Every pastor must keep five parish books: 1) the baptismal register; 2) the confirmation register; 3) the marriage register; 4) the register of deaths; 5) the census book (c. 470, §1). In addition, he must have an account book containing the record of income and expenditures, as we have already remarked. The baptismal, confirmation, marriage, and death registers can be separate or composite volumes.

In the baptismal register must be entered the names of all persons baptized in his parish, whether these arc his subjects or not. In the latter case he must send notice of the baptism to the proper pastor also (c. 778).

The baptismal register must have a wide margin so that after each name there may be space to record: 1) confirmation; 2) marriage; 3) reception of subdeaconship; 4) the profession of *solemn* vows (c. 470, §2). This is an obligation imposed by the common law, and the reason in the case of marriage, subdeaconship and solemn vows is that these constitute diriment impediments to marriage, so that an extract of the baptismal register (a baptismal certificate), which must be furnished every priest who assists at a marriage, will testify whether or not the party is free to marry. To this end notice of every contracted marriage, of subdeaconship and solemn vows must be transmitted to the party's parish of baptism, by the responsible persons, whether priest (c. 1103, §2), bishop (1011), or religious superior (c. 1011, 576, §2).

Every pastor should have his own parish archives in which to keep the above registers and important episcopal or chancery documents and papers worthy of retention. The archives, like the parish books, are subject to inspection at the time of the visitation (c. 470, §4).

Finally, every pastor must have a parish seal for the purpose of authenticating copies taken from the parish registers, e. g., baptismal, marriage certificates, etc. When issuing a document intended to be authentic, the date and place of issuance must be added, and the parish seal affixed, otherwise the document is not authentic (c. 470, §4)

§8. Erection, Division, etc., of Parishes

The Code docs not discuss this subject when speaking of pastors, but the reader must consult Book III of the Code under the title of benefices. A parish being a benefice, whatever the Code rules concerning the erection, union, division, etc. of benefices will apply equally to the erection, etc. of parishes (cfr. p. 549 ft).

ART. II.

Parochial Vicars

A parochial vicar is a priest who substitutes for the pastor in the care of souls. Thus the vicar, like the pastor, assists the bishop in the sacred ministry.

Some vicars have ordinary jurisdiction with all the rights and duties of real pastors, being rated in law as pastors in everything saving the name. But other vicars have only delegated jurisdiction.

There are five classes of parochial vicars: 1) actual vicars; 2) the vicar administrator; 3) the vicar substitute; 4) the vicar adjutant; 5) the vicar cooperator, called in our country the assistant, assistant priest, or assistant pastor.

§1. The Actual Vicar (c.471)

The actual vicar is a priest chosen by a moral person where a parish is united to the moral person, so that the vicar may exercise the *actual* care of souls while the moral person retains the *habitual* care of souls. Religious parishes are cases in illustration. Here the parish is united to the house, abbey, province, etc., and the latter are the habitual pastors, while the priest we call pastor is really the vicar of the foregoing, though the distinction is more academic than practical.

As to his appointment, he is presented by the moral person but receives canonical institution from the bishop. Thus a religious superior designated by the constitutions, e. g., the provincial, presents a priest of his province to the bishop, and the bishop, if he approves of the choice, thereby confers the parish on the priest.

As to removal, the actual vicar, if a secular priest, e.g., the vicar of the cathedral chapter, cannot be removed by the moral person who presented him. But he can be removed by the bishop in the manner of secular pastors. But religious actual vicars, or

simply religious pastors, arc removable *ad nutum,* i. e., at the good pleasure of either the bishop or the religious superior, as already explained above.

Actual vicars, whether of the secular or religious clergy, may be called vicars or they may be called pastors, they being in fact the actual pastors, and the moral person the habitual pastor. They are not called rectors.

As to their jurisdiction, actual vicars have all the rights and duties *of* pastors, including the obligation of the *Missa pro populo.* Their jurisdiction is ordinary, and they may delegate the same *per modum habitus* or *ad actum,* as was said when we explained the rules governing the exercise of jurisdiction.

§2. The Vicar Administrator (c. 472-473)

The administrator *(vicarius oeconomus)* is a priest who exercises the care of souls provisionally during the *vacancy* of a parish, e. g., between the time of a pastor's death and the appointment of a new pastor.

The administrator has ordinary jurisdiction, having all the rights and duties of a pastor in virtue of his office, including the obligation *of* applying Mass for the people. Hence, e. g., he may not only assist at marriages himself, but he may delegate another priest to assist at specified marriages, or if this priest is his *vicarius cooperator* (cfr. §5 below), he may authorize him to assist at all marriages which may come up. (Pont. Comm. May 20, 1923; *Acta* XVI, 114).

Until an administrator is appointed, the first assistant, immediately upon the vacancy of the parish, receives from the law itself full parochial rights; and if there is no assistant, these rights in the vacant parish are given to the nearest neighboring pastor. But upon the vacancy of a religious parish it is the local superior, not the first assistant, who receives full parochial rights from the Code; and if the pastor was the superior, it will be the priest who by the law of the constitutions succeeds the superior in the government of the house. In practise these points need not create difficulties, for rhe bishop must be informed at once in case of a vacancy through death, and he will either confirm the arrangements described, or change them, which he is authorized to do. For these arrangements hold by law only until they arc confirmed or modified by the local Ordinary.

§3. The Vicar Substitute (c. 474)

The vicar substitute is a priest who governs a parish during the absence of the pastor, or pending the recourse to the Holy See taken by a pastor against the bishop's decree of removal. Hence, the parish is not vacant, otherwise an administrator or a new pastor would be appointed.

If the pastor intends to go on vacation, or otherwise absent himself for longer than a week, he must first obtain written permission of the local Ordinary. When requesting this permission the pastor should take care to mention the name of the priest whom he intends should supply for him. If the Ordinary approves of the choice, the priest *ipso facto* becomes a vicar substitute. This we already saw.

The vicar substitute has all the rights and duties of a pastor, saving matters which the local Ordinary or the pastor may have reserved. Therefore, if not reserved he may assist at all marriages that may come up, and he may authorize another priest to take the marriages in his stead, if this other priest is a *vicarius cooperator,* but if he is not, he may delegate him only for specified marriages.

A pastor who absents himself for less than a week need not obtain previous permission of the local Ordinary. But he must nevertheless provide for his people, cpecially for cases of emergency. If he has an assistant, there is no difficulty. If he arranges with a neighboring pastor, the latter is not a substitute and can assist only at specified marriages, but not at any marriages which may come up, since he is not a *vicarious cooperator.* At the most he may, in an unexpected marriage case, call the parties to his parish and there assist at their marriage.

§4. The Vicar Adjutant (c. 475)

The vicar adjutant *(vicarius adjutor)* is a priest given to a pastor who is incapable of discharging his duties properly because of some *permanent disability,* c. g., old age, mental weakness, blindness, etc. Ordinarily such pastors arc not removed from office unless absolutely necessary, since affliction is not to be added to affliction.

The local Ordinary appoints the vicar, adjutant ; in the case of a religious parish the superior presents him.

Saving the obligation of the *Missa pro populo,* which the pastor must fulfill personally or through another, offering the latter a stipend, the vicar adjutant has all the rights and duties of a pastor,

unless the Ordinary makes reservations in the letters of appointment. In that supposition the priest retains the name of adjutant, but in reality his powers are delegated, like those of an assistant *(vicarius cooperator.)*

Usually, if the pastor is *sui compos,* the adjutant has only restricted and delegated powers, and remains under the authority and vigilance of the pastor. If the adjutant has all authority, his jurisdiction is ordinary. If ordinary, he may delegate a non-assistant to take this or that specified marriage, and he may delegate a *vicarius cooperator* to assist at indeterminate marriages. If the adjutant has no full powers, his rights with respect to assisting at marriage, and sub delegating others in his place, are identical with those of the *vicarius cooperator.* (Pont. Comm. May 30, 1923; *Acta* XVI, 114).

§5. The Vicarius Cooperator (c. 476)

With us this is the assistant. Technically, the *vicarius cooperator* is a priest given to a pastor who cannot govern the parish alone because of the large number of souls, or for reasons other than those calling for a vicar adjutant as described above, e.g., vast extent of parish, differences of language and nationalities, etc.

Usually assistants arc appointed for the entire parish. They may be assigned to a certain section, however, with its own church (chapel) and residence for the priest, but in such cases the priest is not a pastor; he remains a vicar, i. e., an assistant.

As to their appointment, secular assistants are appointed by the local Ordinary, after consulting with the pastor. Religious assistants arc presented by the superior after consulting with the pastor, and the local Ordinary grants the approbation, or canonical mission. In some countries it has been the custom of appointing assistants without consulting the pastor. Such custom can no longer prevail against the Code. Even though centenary, it should be removed if this can be done without inconvenience. (S. C. Council, Nov. 14, 1920; *Acta* XIII, p. 43).

As to their removal, secular assistants are removable *ad nutum* by the bishop, the vicar-capitular (diocesan administrator), and by the vicar-general with special mandate. Religious assistants can be removed in the same manner as religious pastors, i. e., *ad nutum,* by either the local Ordinary or the superior, the one advising the other beforehand, and neither being bound to state the reasons to the other.

As to their powers, assistants supply for the pastor in the general government of the parish, and this in virtue of their office. But their

faculties, being delegated, must be learned from the bishop's letters of appointment, from the diocesan statutes and from the pastor's commission. That the assistant's powers arc all delegated, and that he does not enjoy ordinary jurisdiction, seems to be the more generally accepted view. Consequently, unless expressly authorized, he may not assist at marriages. But he may be given not only particular, but general delegation, to assist at marriages, and in the latter case he may subdclegate his powers for specific marriages (Pont. Comm. May 30, 1923; *Acta* XVI, 114). If the diocesan statutes contain a provision to the effect that assistants may confer all the sacraments, this does not extend to marriage, unless custom so interprets the statutes. (H. O., Sept. 27, 1898; J. 5. 5. XXXI, 317).

ART. III.

Chaplains
(c. 479, §2)

A chaplain is a priest attached to some institution with a public or semi-public oratory for the purpose of exercising the sacred ministry in respect to its inmates. Hence, chaplains assist the bishop in the care of souls with respect to these institutions in the diocese.

As there are various kinds of institutions, so there are many varieties of chaplains, e. g., chaplains of convents, hospitals, prisons, orphanages, etc.

What rights and duties are enjoyed by chaplains must be learned from the Ordinary's letters of appointment, or from the decree of exemption in the event, and to the extent, that the bishop has exempted a particular institution from the jurisdiction of the local pastor. Usually, chaplains may say Mass, distribute communion, hear confessions, except in the case of religious women, and preach. In addition, and by virtue of common law, the chaplain of all lay religions, other than those of nuns, may administer Holy Viaticum and Extreme Unction. And they may, if so empowered, conduct the funeral services of lay *male* religious (c. 514, §3). In monasteries of nuns with solemn vows the ordinary confessor, or his substitute, takes Holy Viaticum to the dying and administers Extreme Unction (c.514, §2) ; but the chaplain conducts the funeral service (c. 1230, §5). For communities of religious *women* with simple vows, the chaplain conducts the funeral service if the institution is exempt from pastoral jurisdiction (c. 1230, §5).

Chaplains of Catholic hospitals usually receive the right to administer Holy Viaticum and Extreme Unction, and to this extent the hospital will be exempt from the pastor. Hence, the proper pastors of the inmates would not be allowed to go to the hospital and administer these sacraments. The same is true if the chaplain is authorized to administer solemn baptism and assist at marriages, which is seldom verified. But in urgent cases chaplains, like any other priests, may administer private baptism and even assist at marriage. The record is kept in the local parish books if the institution is not exempt from the local pastor.

ON RELIGIOUS

Ecclesiastical persons arc cither clerics, religious or laymen. Having considered clerics in Part 1, we pass on to study the law on religious.

'I'he division of ecclesiastical persons into clerics, religious and laymen is not an adequate one in a certain sense, because religious are not persons distinct from clerics and laymen. In fact, religious are either clerics or laymen. However, a special treatise on religious as such is necessary because of the peculiar rights, privileges and duties which the law attaches to the religious state. In other words, clerics insofar as they are also religious, have additional rights and duties distinct from those attaching to the clerical state alone, while laymen insofar as they are religious have rights and duties over and above those common to ordinary lay Catholics.

We shall distribute Part II into 8 chapters as follows: 1) On the religious state in general; 2) On the erection and suppression of religions, provinces and houses; 3) On government in religions; 4) On admission to a religion; 5) On religious profession and its effects; 6) On the obligations and privileges of religious; 7) On departure from a religion; 8) On societies of men or women who lead a common life without vows.

Chapter I

THE RELIGIOUS STATE IN GENERAL

In this chapter we shall discuss: 1) the nature of the religious state; 2) the history of the religious state; 3) terminology peculiar to the law on religious; 4) precedence among religious.

ART. 1.

Nature of the Religious State

In general the word *state* denotes a permanent unchanging mode of life. In this sense we may speak of the clerical state, the conjugal state, etc. In this general sense, then, the religious state would be simply the ordinary every day mode of life characteristic of conscientious, God-fearing people.

But in canon law *religious state* has a technical meaning. Canon 487 defines it to be: *a stable mode of life led by those persons who, in addition to keeping the commandments, strive after evangelical perfection by the observance of the vows of poverty, chastity and obedience.* A society of such persons approved by competent ecclesiastical authority is called a religion, while the members themselves are called religious. It remains to explain our definition more at length.

First, the religious state is one of *evangelical perfection.* Perfection is the realization of the end for which a thing exists and for which it has been created, such, e.g., as seeing is to the eye and hearing is to the car. Man's ultimate end is possession of God through union with Him. It follows that the closer man comes to this possession or union, the more perfect will he be. Ordinary perfection is attained through the observance of the commandments. Extraordinary perfection consisting in a still closer union with God is attained through the observance of certain superrogatory works called counsels, which being found in the Gospels *(evangelia)* are

called evangelical counsels. Although various counsels are contained in the Gospels, there are three which when taken collectively excel all others as a means to higher perfection since they are adequate of themselves to remove the chief obstacles to eternal salvation, namely: voluntary poverty which is opposed to the concupiscence of the eyes, chastity which subdues the concupiscence of the flesh, and obedience which safeguards against the pride of life. These counsels have Christ Himself for their author: // *thou will be perfect, go sell what thou hast, and give to the poor, and thou shalt have treasures in heaven; and come follow Me* (Mt. XIX, 21) ; and : *Everyone that hath left house or brethren, or sisters, or father or mother, or wife or children, or lands for my name's sake, shall receive an hundredfold and shall possess life everlasting-* (Mt. XIX, 29). Whereas in the above texts we find voluntary poverty counseled, obedience is'advised in this text: *If any man will come after Me let him deny himself, and take up his cross daily and follow Me* (Lk. IX, 23). Voluntary chastity is counseled in Mt. XIX, 12: *And there are eunuchs who have made themselves eunuchs for the kingdom of God.* If those who observe merely the commandments deserve to be called religious, those who in addition keep the counsels just described have a still greater right to that title.

Secondly, the counsels must be confirmed by *vows* if we are to have the religious *state.* In the clerical and conjugal life stability is secured by law. In matters of mere counsel, stability can be secured in no way other than by vows. Here there is no authority commanding or imposing an obligation. Nor would a voluntary promise of poverty, chastity and obedience made to man suflice, since the latter, e.g., the bishop, who accepts the promise could of his own authority release the individual of his obligations. However, even the slightest degree of stability is compatible with the religious state, that, e.g., which is implied in temporary vows, provided that both he who takes temporary vows as well as the superior intend that they be renewed upon their expiration. From all this it follows that vows are essential to the religious state by the will of Christ.

Thirdly and fourthly, the religious state, as now understood, demands *common life* in an *approved religion.* This is in virtue of ecclesiastical law only. In the beginning, as we shall see, the eremitical life no less than the cenobitic life was regarded as one of evangelical perfection. As to the explicit ecclesiastical approval for religious organizations this was not required before the 13th century.

It should be noted, finally, that the religious state is a *status perfectionis acquirendae* not a *status perfectionis acquisitae.* One

docs not become perfect in the spiritual sense immediately when he pronounces vows in a religion; this is but the beginning of the effort.

ART. II.

History of the Religious State

In respect to its fundamentals, i.c., the three counsels and vows, the religious state has Christ for its author as was said. As to its accidentals, namely, common life, ecclesiastical approval for this or that institution, the rules and constitutions of the different religions, the religious state is of human origin. The history of the religious state, then, is simply the history of these accidental forms.

Ascetics and virgins— In the first two centuries of the Church's history we find the first manifestations of the religious state exhibited by the ascetics and virgins. These were Christians who, although living in the world, kept themselves recollected in the midst of dissipation and pure in the midst of corruption. Whether they observed the three evangelical counsels described, and this in virtue of vows, we do not know. It seems, however, that their status was publicly recognized by the Church for they assumed a distinct garb, made solemn spiritual holocausts of themselves in the hands of the bishop, and were accorded places of honor in church gatherings.

Hermits and cenobites— The religious state becomes more pronounced in the third and fourth century. To escape the persecutions of those times many Christians fled into the deserts of Palestine and Egypt where they could serve God in seclusion free from the distractions of the world. They can be called anchorites in the sense that they retired from the world. But some anchorites led the life of hermits, i.e., the eremitical life, alone in some mountains or sylvan solitude, and of these St. Paul who died in 341, and St. Anthony who died in 356, are notable examples. Other anchorites, on the other hand, were attracted by the saintly life of some hermit, put themselves under his spiritual direction, followed his rule of life, and began life under a common roof. 'These were called cenobites and St. Pachomius who died in 346 is considered the father of the cenobitic life.

Monastic Orders— The cenobitic or common life completely replaced the eremitical life within a very short time. The cenobitic system when applied to the religious state came to be called monasticism. Those who professed this form of religious life were called

monks, and their houses were known as monasteries. These words are derived from the Greek *monos* which means both *alone* and *one,* and they may have originally signified either the life led *alone* and apart from the world, or the life under *one* rule. In the Eastern Church monasticism made great strides under the influence of the religious rule laid down by St. Basil, Bishop of Caesaria (d. 379). He is known ns the father of Eastern monasticism and the lawgiver of the Oriental monks.

The patriarch of the Western monks was St. Benedict (480-543) who founded his famous abbey at Monte Casino in Southern Italy in 529. It was here that he composed his rule which until the 12th century was observed by religious in the entire Western Church, for the Benedictine rule was carried to all parts of Europe by the missionary monks who also took care to establish monasteries wherever the Catholic faith found root.

St. Benedict introduced the vow of stability which bound the monk to remain in the monastery in which he made his profession, and thus put an end to capricious changes from house to house. According to the Benedictine rule each monastery was to remain entirely independent of all others. But in course of time wc find several monasteries uniting to form a monastic congregation. The first monastic congregation was that of Cluny. Its origin can be traced to the influence which the abbc}· of Cluny by reason of the superiority of its religious observance had come in the 10th century to exercise over neighboring monasteries which gradually placed themselves under the spiritual direction of the abbots of Cluny and even acknowledged in them a legal headship. Although this was a departure from the Benedictine ideal the amalgamation had its advantages, and soon other monasteries united to form congregations, usually under the headship of some abbey renowned for its religious reform. The Lateran Council of 1215 decreed that the monasteries of each country were to unite themselves into as many congregations, although the decree was not universally observed until the time of the Council of Trent, which council threatened loss of exemption for those monasteries which refused compliance.

At the present day the so-called Black Benedictines number 14 Congregations, and since 1893 they have been combined into a federation with an abbot-primate at the head. His powers do not resemble those of a superior general in other religious Orders, hut his office is mostly one of supervision and counsel to the end that a closer union and a more brotherly spirit may continue among the several Black Benedictine Congregations.

From the Benedictine tree have sprung the following inde-

pendent monastic Orders: the Camaldolcse (1012); the Vallombrosians (1015); the Cistercians (1098); the Sylvestrincs (1231); the Olivetans (1313); the Trappists (1664) and the λlechitalists (1701). Although these without exception follow the original rule of St. Benedict, they are not classed as Benedictines being so many Orders distinct from, and independent of, the Federated Black Benedictines.

Canons Regular—The first noteworthy departure from the Benedictine form of monastic life is found in the 12th century in the case of canons regular. During this century in many places of Europe secular canons of cathedral and collegiate churches introduced community life among themselves, and bound themselves by vow to observe the rule of life laid down by St. Augustine centuries previous. Such canons came to be called canons regular to distinguish them from secular canons. But the ideal of community life soon waned among the canons. The *dnnuario Pontificio* lists six Orders of Canons Regular still in existence: 1) the Canons Regular of the Lateran (f. 11th century); 2) the Hospitalitarian Congregation of the Great St. Bernard (Pass in the Alps) who were founded in the 11th century likewise; 3) the Swiss Congregation of St. Maurice of Agaune (f. 1128) ; 4) the Prcmonstratensian Congregation (f. 1120); 5) the Croisier Canons (f. 1211); 6) the Croisiers of the Red Star (f. 1237).

Mendicant Orders—These arose in the 13th century as a protest against the luxurious lives of both secular and regular clergy. For although the religious Orders had hitherto imposed poverty on its individual members, the monastery as such could possess and own temporal goods, and it was on this latter score that luxury had crept in. As a result the new mendicant Orders renounced property rights even for the communit}', and they contented themselves with living on daily alms; hence, they were called mendicants (from *mendicare* to beg).

The four original mendicant Orders are: 1) the Dominicans, or the Order of Friars Preacher, founded by St. Dominic and approved by the R. Pontiff in 1216; 2) the Franciscans, or the Order of Friars Minor, founded by St. Francis of Assisi and approved definitely in 1223; 3) the Carmelites approved in 1226; 4) the Augustinians, or the Hermits of St. Augustine, approved in 1255. Other mendicant Orders appeared later: the Servîtes, the Trinitarians, the Mcrcidarians, the Minims of St. Francis, the Order of St. John of God, the Penitents of Jesus of Nazareth (Scalzetti Fathers), and the Teutonic Knights. Cfr. *dnnuario Pontificio*.

It must he noted that the mendicant Orders, as well as clerics regular and most modern Congregations, have a centralized form of government. Their houses are not independent of one another as is the case with the *monastic* Orders, hut several houses are subject to a common superior usually called the provincial, and the provinces in turn are under a common superior usually called the general.

Clerics Regular—The various Orders of clerics regular arose in the 16th and 17th century. Their members are primarily priests who devote themselves to the sacred ministry while leading a common life under vows. Defections from the faith among both clergy and laity which followed the so-called Protestant Reformation explain their origin, namely, to supply for the depleted ranks.

Clerics regular differ from monks in that they do not live a life of contemplation segregated from the world. They differ from canons regular in that they have no cathedral or collegiate chapters being occupied more with the ministry than with choir service. They differ from mendicants in that while the latter like the clerics regular devote themselves to the sacred ministry and the cultivation of learning, yet the priestly character does not overshadow their religious ideal; whereas the clerics regular arc priests primarily, and religious only secondarily, so to say, which is manifested even in their external mode of life, for their dress approaches more that of secular priests than that of the ancient religious Orders.

In the *Annuario Pontificio* wc find the following listed as clerics regular: the Theatines; the Barnabitcs; the Jesuits; the Somaschi; the Regular Clerics Ministering to the Sick; the Minor Clerics Regular; the Clerics Regular of the Mother of God; the Piarists, or Clerics Regular of the Mother of God of the Pious Schools.

Second and Third Orders—Practically all the mendicant Orders and the Clerics Regular saving the Jesuits, founded monasteries for religious women. These monasteries constituted the second Order, the first Order in point of time being the Order of regulars to whom the nuns were subject. But some nuns do not belong to a second Order since they arose independently of Regulars, e. g., the Ursulines and the Visitation Nuns.

The nuns, like the regulars, professed solemn vows. They were held, however, to a stricter form of enclosure than the regulars since they were forbidden to leave their monasteries, not so the regulars. Hence, the nuns could not be organized into a centralized Order as was the case with the Regulars for the simple reason that

they could not be visited by a Mother Provincial or a Mother General, superiors as well as subjects being bound to the enclosure. The second Orders of necessity followed a rule distinct from that of the first Orders. Each monastery of nuns was *sui juris,* i. e., independent of every other monastery of the same Order. They were subject immediately to the prelates of the first Order, and enjoyed exemption from the jurisdiction of the local Ordinary no less than the Regulars. But the political and social changes within the last two centuries made it imperative to withdraw nuns from the jurisdiction of the prelates of the first Order, and to subject them to the jurisdiction of the local Ordinaries, e. g., in many European countries religious first Orders lost houses through the confiscation of civil rulers. According to the Catholic Encyclopedia *(llenedic· tines)* the convents of Benedictine nuns subject to Benedictine abbeys recently numbered nine, whereas 253 convents were subject to the local Ordinaries.

Those religious Orders which recognize an Order of nuns as their second Order usually have a third Order. St. Francis of Assisi gave a rule of life to those who wished to follow his ideals while remaining in the world and without vows. Similar rules were formulated by the founders of other I Orders. Very early, however, some of these tertiaries banded together under a common roof and pronounced vows. Some went so far as to take solemn vows, a vestige of which practise we sec today in a religious organization known as HI Order Regular of St. Francis. But most tertiaries who led the common life took only simple vows, and thus prepared the way for religious Congregations of modern times as distinct from the older religious Orders. Third Orders of men or women who live a common life with vows arc called third Orders *regular* to distinguish them from third Orders *secular* whose members live in the world without vows. With the exception of the Third Order Regular of St. Francis whose members take solemn vows, all other III Orders regular are in reality Congregations for their members pronounce only simple vows.

Religious Congregations— Until comparatively recent times the vows pronounced by members of religious organizations were solemn vows without exception, i. e., vows which by the law of the Church had the effect of invalidating acts placed in contravention of the vows. The year 1752, however, saw the founding and approval of the last religious Order, namely the Penitents of Jesus of Nazareth, or the Scalzetti Fathers. Thereafter only religious Congregations received approbation, understanding by a Congregation as opposed to an Order, a religious organization in which only simple

vows arc taken. Furthermore, by a simple vow as contrasted with a solemn vow wc understand a vow which merely prohibits under sin acts done in contravention of the vows, but leaves the validity of such acts intact.

Several causes contributed to the rise of the Congregations. First, already as early as 1215, Innocent III in the II Lateran Council had strictly forbidden that new religious Orders be founded without approval of the Holy See. The Pope was persuaded that religious Orders had become sufficiently diversified, not to say multiplied, and moreover, some were leaning to superstitious practises and heretical tendencies. But this ban was not construed as extending to societies of men or women who were satisfied with simple vows. In fact, Leo X in the Const. *Inter cetera* (Jan. 10, 1521) permitted tertiaries to lead a common life with simple vows, but without regarding such societies as religions. But shortly thereafter St. Ignatius obtained papal approval of his Constitutions which admitted the *scholastics* to simple vows, only the *professed members* having solemn vows. From this fact, incidentally, Gregory XIII later proved that the religious state could exist without solemn vows. As to the tertiary Congregations which for centuries were the only religious Congregations, the services which their members rendered to the sick, the poor, the ignorant, etc. proved so beneficial that by the 18th century we find the Holy See permitting the founding of non-tertiary Congregations as well. It should be noted that female Congregations were permitted to engage in active life outside of their convents, not being held to the law of papal enclosure as were the nuns of II Orders with solemn vows. Finally, the adverse civil laws since the French Revolution cither outlawing regular Orders on principles of so-called public policy (solemn vows being construed as incompatible with the natural rights of citizens which the State was bound to protect), or authorizing the confiscation of ecclesiastical property including the monasteries of nuns thus making a retired and cloistered life impossible in their case, confirmed the policv of the Holy See in approving none but religious Congregations since the 19th century.

Although Congregations of tertiaries were founded by bishops already since the 16th century, it was not until the Holy See began giving approval also to non-tertiary Congregations that the latter too were founded by bishops.

The */fnnuario Pontificio* recently enumerated 84 male Congregations of papal law, although some, as we shall sec, can be called Congregations only in an imperfect sense, their members not taking the three substantial vows. Among these older Congregations arc:

the Brothers of the Christian Schools (f. 1680) ; the Passionists (f. 1720) and the Redemptorists (f. 1732). Of the female Congregations of papal law some 450 were recently listed in the *.Innuario Pontificio.*

Institutions without vows—These societies cannot be called religions because although their members lead a common life, they either take no vows, or not all the three substantial vows, or they take the three vows but on condition that they be renewed at the good pleasure of the members. Examples arc: the Oratorians of St. Philip Neri ,(f. 1575), and the Sulpicians (f. 1642), besides numerous modern institutes both of men and women.

ART. IIL

Technical Terms Defined
(c. 488)

'l'hc various historical forms of the religious state as outlined in the preceding article have given rise to a number of technical terms which, due to the variant and confusing sense in which they were employed by pre-Code writers, have now received an official and fixed meaning by the Code in c. 488. These terms ought to be well mastered from the outset since they will recur from time to time in the treatise on religious.

Religion—A religion is a society approved by the competent ecclesiastical superior, the members of which take public vows, either perpetual or temporary but subject to renewal upon expiration, and thus tend to evangelical perfection.

It should be noted here that in federated monastic religions the religion is not the individual monastery but the aggregate of all the monasteries of a monastic congregation. The federation of the 14 Black Benedictine Congregations docs not constitute a separate religion. In centrally organized religions the religion is the totality of all the provinces, or where the religious organization docs not admit of provinces, the religion is the sum total of all the houses.

Order and Congregation—An Order is a religion in which solemn vows arc taken ; a Congregation is a religion in which only simple vows arc taken. The aggregate of several independent monasteries is likewise called a Congregation, but such a Congregation is an Order. The word Congregation without further qualification means a religion in which only simple vows are pronounced. If the

union of several independent monasteries is intended we speak of a *monastic* Congregation.

Solemn vows and *simple vows*—Whether vows are solemn or simple is not determined by the solemnity of the external ceremonies accompanying profession. Λ vow is solemn if it not only prohibits contrary acts under pain of sin, but renders those acts invalid. A vow is simple which merely renders illicit those acts performed in contravention of the vow, but leaves the validity of the acts untouched. 'Thus, a religious under solemn vows cannot contract a valid marriage, nor conclude a valid contract conferring property rights in his own name, nor take a private vow or oath whose fulfillment would be incompatible with the observance of his rules and constitutions. On the other hand, a religious under simple vows sins if he marries, or alienates his goods without the superior's permission, but the marriage and the alienation would be valid. Solemn vows are pronounced only in religious *Orders.*

Exempt religion and *non-exempt* religion—An exempt religion is one which has been withdrawn from the jurisdiction of local Ordinaries; all other religions are non-exempt.

Religions of papal law and *religions of diocesan law*—A religion of papal law is one which has received the approbation of the Holy See, or at least the so-called *decretum laudis.* A religion of diocesan law is one which has been approved by the local Ordinary but which has not yet received the *decretum laudis* of the Holy See. It may he noted that religions of papal law enjoy more independence with respect to the local Ordinary than do religions of diocesan law. The points of difference arc revealed by a study of the various canons on religious.

Clerical religions and *lay religions*—A clerical religion is one the majority of whose members are priests, e. g., the Franciscans. Benedictines, Dominicans, etc. A lay religion is one which admits no priests at all, e.g., all sisterhoods, and practically all lay brotherhoods, or only a few priests, c. g., the Order of St. John of God, most of whose members are lay brothers.

Religious house—A religious house is a canonicallv established house of any religion whatsoever.

Formal house and *non-formal house*—A formal house *(domus formata)* is a religious house in which at least six professed religious arc living as *de familia* members. If the religion is a clerical one, at least four of these members must be priests to have a formal house. All others are non-formal houses *(domus non formatae).*

Province—A province is the subdivision of a centrally organized

religion, and consists of the union of several houses under one superior called the provincial. The aggregate of all the provinces constitutes the religion. Sometimes a province is coterminous with a nation, sometimes it extends to two or more countries, sometimes several provinces are found in the same country.

Religious— A religious is a man or woman who in some approved religion, whether of papal or diocesan law, has taken public vows, whether perpetual or temporary, solemn or simple. Therefore, novices and postulants arc not included under this term, generally speaking.

Religious of simple vows— By this term are meant the professed religious of a *Congregation.*

Regulars— By this we mean the professed religious of an Order. The term, therefore, includes even the temporarily professed religious of an Order.

Sister—This term applies to all professed religious in *female Congregations.*

Nun— By a nun *(monialis)* the Code understands a professed religious in a *female Order.* Unless the nature of the case, or the context indicates otherwise, the term also includes religious women who in certain places by a ruling of the Holy See take onty simple vows though they belong to an Order whose rule calls for solemn vows.

Since the French Revolution the nuns of France and Belgium have been permitted by the Holy See to take only simple vows. The nunneries of the United States were originally founded by nuns who immigrated to this country from Europe, many of them from France and Belgium. Owing to this fact, as also to the moral impossibility of enforcing the strict papal enclosure in the case of American nuns who for the most part must engage in active service to support themselves, which was the case with the nuns of France and Belgium after the confiscation of their monasteries and temporalities, the S. C. of Bishops and Regulars declared on Sept. 2, 1864 that in the U. S. the vows of nuns who had immigrated to this country were not to be considered solemn unless certain nuns had received a special Apostolic induit permitting them to take solemn vows. Such induit according to the above declaration was enjoyed only by the Visitation nuns of Georgetown, Mobile, St. Louis, Baltimore. and the now suppressed monastery of Kaskaskia *{Collectanea* of Bizzarri, I cd., p. 778).

Nuns who have been taking only simple vows by a special ruling of the Holy See may, if changed circumstances seem to warrant it, petition the R. Pontiff to allow them again to pronounce

solemn vows (S. C. Rel., June 23, 1923; *Acta* XV, 357). If a monastery of nuns transfers to this country from a country where they had permission to take solemn vows, the Holy See must be consulted as to whether they may be permitted to continue with solemn vows in the new establishment (S. C. Rel., Oct. 11, 1922; *Acta* XIV, 554).

In the United States, therefore, the general presumption is that all nuns, c. g., the Poor Clares, the Carmelite nuns, the Dominican nuns of the II Order, etc., take only simple vows unless they can show a special induit from the Holy See authorizing them to take solemn vows. But even though they take only simple vows they are a religion of papal law. And whenever the Code uses the term *monialis* they are to be included, unless the nature of the case, or the context, indicates otherwise. This qualifying clause will often create difficulties, it is true. Thus, it is disputed by canonists whether an Apostolic induit is required in virtue of c. 497 to establish a monastery of nuns with simple vows. That these nuns are subject to the jurisdiction of the local Ordinary, on the other hand, was expressly declared by the S. C. Rel., June, 23, 1923; *(Acta* XV, 357).

Major superiors— Under this heading come: 1) an abbot-primate, 2) an abbot superior of a monastic Congregation; 3) a local abbot of an independent monastery; 4) the supreme moderator of a religion, often called the general; 5) the provincial; 6) the vicars of all the foregoing; e.g., the commissary general, or the commissary provincial; 7) all who exercise quasi-provincial authority; who these latter are must be learned from the constitutions of each religion.

Ordinaries— Whenever the Code uses this term it intends to include besides bishops, vicars-gcneral and other local Ordinaries, also major superiors in clerical exempt religions. But the term *local Ordinaries* does not include major religious superiors (c. 198).

Rules and *Constitutions*— Religions are distinguished one from another principally by their rules and constitutions. It is these which determine the scope of the religion, the nature of the vows to be taken, the mode of organization, etc. The Code lays down general laws which must be observed by all religions, and to which all rules and constitutions must conform. More particular details, e. g., the form of the habit, the moral obligation of the vows, etc. are left to the rule and constitutions in any particular case.

The rule as distinct from the constitutions is the fundamental law containing the more general and stable elements, and therefore less subject to change. It is the charter given by the founder. The

constitutions are so many by-laws or prescriptions which by way of commentary on the rule have been added in course of time by the Holy Sec or the religious superiors in their chapters.

All the older Orders follow one of the four great rules: 1) the rule of St. Basil which is that of the Oriental monks; 2) the rule of St. Augustine which is a compilation of various writings of the Bishop of Hippo on the religious life, and serves as the charter for the Canons Regular, the Hermits of St. Augustine (Augustinians), the Prcmonstratensians, the Dominicans, the Servîtes and the Order of St. John of God; 3) the rule of St. Benedict observed by the various monastic Orders, each Order, however, having its own constitutions; 4) the rule of St. Francis of Assisi which is common to the three families of the I Order, although each family follows its own constitutions and has its own general superior.

Practically all the recent Congregations of men and women have constitutions only and no rule. This is true also of the Carmelites and the Jesuits.

In view of the changes introduced by the Code, the Holy See decreed that every religion of papal law had to submit to the Holy See for approval a revised text of their rules and constitutions to conform with the legislation of the Code (S. C. Rel., June 26, 1918; *Acta* X, 290). Moreover, all female religions of papal law, as also all societies of men or women living in common without vows had to submit their custom books, and books of common devotions to the Holy See for approval (S. C. Rel., Mar. 31, 1919; *Acta* XI, 239).

ART. IV.

Precedence Among Religious
(c. 491)

The following rules are based partly on juridical, partly on historical reasons:

1) The secular clergy' precede religious clergy and the laity ; but unless it is a lay religion the secular clergy' do not precede religious in the churches of the latter, although cathedral and collegiate chapters precede religious everywhere.

2) Religious precede the laity;

3) Clerical religions precede lay religions;

4) Canons regular precede monks;

5) Monks precede all other regulars;

6) Regulars precede religious Congregations.

7) Among religions of the same species the rules laid down in c. 106, n. 5 apply. Thus, as between Dominicans and Franciscans, both being regulars, that religion precedes which was first established in the place.

Chapter II

THE ERECTION AND SUPPRESSION OF RELIGIONS, PROVINCES AND HOUSES

We shall consider the law: 1) as concerns religions of *diocesan* law and their houses; 2) as concerns religions of *papal* law, their provinces and houses.

ART. I

Religions of Diocesan Law

We shall discuss: 1) the erection and suppression of the religions themselves; 2) the erection and suppression of their houses.

§1. Erection and Suppression of the *Religion*

Erection—A religion of diocesan law, it was said, is one founded or at least approved by the bishop, but which has not received the approval of the Holy Sec, or at least the so-called *decretum laudis.*

We have also seen how the Holy See since the 16th century tolerated the founding of new Congregations with simple vows without the need of consulting Rome in the matter. But on July 16, 1906 Pius X *{Fontes* III, p. 675) issued a *Motu proprio* "Dei providentis" in which the bishops were commanded to have recourse to the Holy See before proceeding to the establishment of new religions. This law has been substantially inserted in c. 492. It seems that religions with the same object and aims were being unnecessarily multiplied, and that certain religions by reason of their end were proving dangerous to the morals of its members, not to say a source of scandal to outsiders, e. g., in the case of religious women caring for the sick in their homes.

The law just referred to enjoins upon bishops that they first

seek permission of the Holy Sec before establishing a religion of diocesan law. At the same time they should inform the Holy See concerning: 1) the name of the founder and his motives; 2) the name or title of the new religion; 3) the form, color and material of the habit to he worn by the novices and the professed; 4) the nature of the work to be undertaken; 5) the source of the religion's income; 6) whether institutions persuing the same work already exist in the diocese.

Since every religion of diocesan law normally entertains the hope of acquiring in time, the status of a religion of papal Jaw, and since no papal approval will be given to Congregations which do not conform to certain general norms, the bishop when seeking permission to first establish a religion of diocesan law should keep those norms in mind, namely, the Holy Sec is not wont to approve as papal religions: 1) those Congregations which persue no definite scope; 2) those which propose to live solely on alms; 3) sisterhoods which intend to serve the sick in their homes, or to care for infants or maternity cases; 4) sisterhoods that conduct hospitals for both sexes, or hospices for priests, or schools for both boy and girls (mixed schools). But the Holy See is willing to consider the exigencies of times and places, and this explains its tolerance with respect to our sisterhoods in the United States who have charge of general hospitals and parochial schools (cfr. *Normae of* the S. C. Rcl., Mar. 6, 1921; *Acta* XIII, 312 /<?.).

Having obtained the permission of the Holy Sec for the religion's establishment, the bishop may proceed to draft, or revise the constitutions, but he may not modify them on any of the points referred to in the preceding two paragraphs which the Holy See has taken special cognizance of. And once the religion has spread into other dioceses, the consent of all the local Ordinaries in whose dioceses the religion has houses is required to change the constitutions (c. 495, §2).

When giving the religion its constitutions the bishop should take care to erect the religion into a moral ecclesiastical person by formal decree. And as regards those Congregations which were erected prior to July 16, 1906 without intervention of the Holy See, the bishop of the diocese where the mother-house is situated should now issue this formal decree of erection if this has not been done as yet, and after consulting with the other local Ordinaries in whose dioceses the Congregation is established. And if special reasons advise the withholding of such recognition, or some Ordinaries are opposed to the recognition, the matter should be referred to the Holy See (S.C. Rel. Nov. 30, 1922; *Acta* XIV, 644).

If a religion desires to become a III Order, it must in addition be aggregated to the I Order by the regular prelate. It must also observe the essential points of the rule of the I Order, and adopt a somewhat similar dress unless a dispensation is obtained. Affiliation with the I Order does not confer upon the regular prelate any authority whatever over the Congregation. The object of the aggregation is merely to enable the members of the III Order to share in the purely spiritual favors *of* the I Order, especially its indulgences (c. 492).

Suppression—A religion of diocesan law, once legitimately erected, cannot be suppressed save by the Holy See. This is true even though the religion consists of only one house, as is generally the case when such religions are first established (c. 493).

§2. Erection and Suppression of *Houses*

Erection—The permission of the local Ordinary suffices to establish new houses in the diocese of origin. But to establish new houses in another diocese the permission of both local Ordinaries is required, i. e., of the bishop of the new diocese, and of the bishop of the mother diocese. Whether the permission of the latter is required for each new foundation in the *new* diocese, or only for the first foundation is not clear, although the plural *(domos)* employed by the Code strengthens the former opinion (495, §1). In case of refusal, the matter can always be taken to the Holy See. An Apostolic induit is alway required to establish a house in countries subject to the Propaganda, even a house of diocesan law (c. 497).

Suppression—A house belonging to a religion of diocesan law can be suppressed by the local Ordinary after consulting (obtaining the advice) of the superior general, and the permission of the Holy Sec is not necessary. Should the bishop, however, proceed to suppress a house against the wishes of the superior general, the latter may have recourse to the Holy See *in suspensivo,* the Ordinary's decree in the meantime being held in abeyance. But the Holy Sec alone can suppress the only house of a religion, since in this case it amounts to the suppression of the religion itself (c. 498).

ART. 11

Religions of Papal Law

W'c shall discuss: 1) the erection and suppression of these religions; 2) the erection, delimitation and suppression of their provinces; 3) the erection and suppression of their houses.

§1. Erection and Suppression of the *Religion*

Erection—Prior to the 13th century the tacit permission of the Holy See sufficed for the founding of a new religion. The IV Lateran Council decreed that no new *Order* should be founded without explicit approval of the Holy Sec. The last Order so approved was founded in 1752.

At present the Holy See approves only Congregations with simple vows, and those institutes whose members live in common without vows. It is with Congregations that we are now concerned. As to institutions without vows, cfr. *infra,* p. 392, *$q.*

Papal recognition was accorded for the first time to Tertiary Congregations by Leo X in 1521. In the 17th century the Roman Pontiffs began to approve non-Tertiary Congregations as well, e. g., the Redcmptorists, Passionists, Christian Brothers, etc. And this approval coincided originally with the Congregation's first establishment. But for some years now the Holy See has been unwilling to approve Congregations which have not first existed as diocesan law religions.

When the Holy See permits a bishop to erect a religion of diocesan law, this permission is not equivalent to the papal approval of the Congregation. It remains a religion of diocesan law subject in external matters to the local Ordinary, though enjoying independence with reference to internal government, e. g., the admission of candidates, etc.

A diocesan religion becomes one of papal law from the moment it receives the so-called *decretum laudis* of the Holy See whereby the R. Pontiff praises and commends the Congregation itself. The *decretum laudis* is granted only after the Congregation has become somewhat diffused, and has given solid proofs of piety, religious observance and spiritual progress. Together with the *decretum laudis* is given a provisional approval of the constitutions. Then an indefinite number of years must lapse before the Holy Sec gives final approval both to. the Congregation and to its constitutions. This mode of procedure contained in the original *Normae of* June 18, 1901 is repeated in the new *Normae* issued by the S. C. Rcl., Mar. 6, 1921 *(/Ida* XIII, 312, *sq.).* The new *Normae* repeat substantially the prescriptions of those of 1901, simply inserting revisions necessitated by certain changes in the new law of the Code.

Suppression—Religions of papal law can be suppressed only by the Holy Sec, to whom also it belongs to determine the disposal of their goods (c. 493).

§2. Erection, Circumscription and Suppression of *Provinces* (c.494)

Only the Holy See can erect new provinces, divide them, unite them, circumscribe them anew, and suppress them. Likewise it belongs to the Holy Sec alone to separate an independent monastery from one monastic Congregation and unite it to another Congregation.

Unless the constitutions provide otherwise, it belongs to the general chapter, or outside of chapter to the general and his council, to determine the disposal of the goods of the extinct province.

The reader may remember that nothing was said of provinces when discoursing on religions of diocesan law. The reason is that these religions arc not divided into provinces, and have no provincials but only a general, for by the time they have reached such development they have in all probability become religions of papal law.

§3. Erection and Suppression of *Houses*

Erection—An Apostolic induit, in addition to the written consent of the local Ordinary, is required for the establishment of: 1) a house of an exempt religion; 2) a monastery of nuns; 3) any religious house in places subject to the S. C. of the Prop, of the Faith (c.497, §1). Whether the Apostolic induit is required to found a monastery of nuns who take simple vows is disputed after a comparison of c. 488, n. 7 with c. 497, §1.

The permission of the local Ordinary alone suffices for the erection of all other houses whether of religions, of papal or diocesan law (c.497,31).

Permission granted to a clerical religion to erect a new house authorizes the religious to have a non-parochial church or public oratory. But if permission was granted the religious to locate themselves anywhere in the diocese, they must have the approval of the local Ordinary for the particular site in the event they wish to construct a church or public oratory. Moreover, neighboring pastors and rectors of churches must be consulted. But this procedure is not necessary to erect a semi-public oratory in the house, since in this case the faithful have not the right of access to the chapel, and the interests of neighboring pastors or rectors are not endangered. But non-clerical religions may not erect even a semi-public chapel in their houses without a specific permission of the local Ordinary to this effect (c. 497, S2; 1162; 1192).

In every case a religion, whether clerical or lay, receives im-

pliedly, with the permission to erect a house, authorization to pursue those works which arc proper to the institute, *servaiis servandis.* Thus a clerical religion may exercise the sacred ministry, provided as far as concerns the hearing of confessions and sacred preaching the individual priests have the faculties of the diocese. And the local Ordinary may set down conditions in the permission to establish a house; and, if the religious agree thereto, the permission assumes the form of a contract. Thus, in the case of a religion which pursues various charitable works, the local Ordinary may restrict it to one or the other work (c. 497, §2).

To put up a school, or hospice, or any like building as a separate entity from the religious house itself, even though it is an exempt house, a special written permission is required of the local Ordinary and this suffices, without the need of recourse to Rome (c. 497, §3).

Before a religious house can be converted to uses other than those for which it was originally intended, the same procedure as described above must be followed, i. e., the same procedure as was required for the original house foundation. But this does not apply if the change affects only the internal government of the institution, as where a novitiate is turned into a mission house, a convent into a novitiate, etc.; but the procedure is necessary only then when the change has external effects, as where a convent is turned into a retreat house for seculars, into a hospital, college, etc., for seculars (c. 497, §4).

Suppression— Only the Holy Sec can suppress a house belonging to an exempt religion. Non-exempt houses can be suppressed by the superior general with consent of the local Ordinary. In the latter case should there be disagreement, recourse may he had to the Holy Sec *in suspensivo* (c. 498).

Chapter III

GOVERNMENT IN RELIGIONS

Under this title the Code considers the rights and duties of those who: 1) sec to the external discipline in religions; 2) are charged with the internal or spiritual affairs of the religions; 3) care for the temporalities of the religion. These points we shall treat in three separate articles.

A RT. I

External Government of Religions

We shall consider 1) the various kinds of superiors; 2) the nature of their authority; 3) their appointment; 4) their duties.

§1. Various Kinds of Superiors

Of the superiors some are outside of the religion, while most of them are members of the religion.

A. Authorities Outside of the Religion

The Roman Pontiff—Religious, no less than other members of the Church, owe the Pope canonical obedience in virtue of the fourth commandment. In addition, they are bound to obey the Pope even in virtue of the vow of obedience (c. 499, §1). The superior who accepts public vows in a religion does so in the name of the Pope. In obeying the superior the religious but obeys the representative of the Pontiff.

Only where the Pope issues a particular precept, however, and commands obedience thereto in virtue of the vow will the religious be bound to obey in virtue of the vow, and disobedience in this case will be a sin also against the second commandment. Otherwise, papal laws and ordinances, even though they concern religious exclusively, bind only in virtue of the fourth commandment.

The Roman Congregations—The Congregation of Religious

being the Pope's representative as concerns religious may, like the Pope himself, issue precepts binding in virtue of the vow of obedience. But unless the intention of the Congregation to this effect is manifest, one may presume that the commands of the Congregation exact merely canonical obedience. Other Congregations can command only in virtue of canonical obedience, saving where they have received explicit authorization from the Pope to command in virtue of the vow.

The Cardinal Protector—St. Francis of Assisi was the first founder to ask of the Pope a cardinal who might be the *Governor, Protector* and *Corrector of* his fraternity. Later religious founders imitated his example. A religion need not ask for a cardinal protector, although most papal religions, both of men and women, at the present day do have a cardinal protector.

Due to abuses, the functions of governor and corrector were withdrawn from the cardinal protector in course of time, and there remains today only the office of protecting the religion. As a benevolent protector the cardinal espouses the cause of the religious in the Roman Curia, e. g., if their interests are endangered by local developments, by other religious organization, etc. Since he no longer exercises jurisdiction over the religious, the cardinal protector cannot issue commands unless specially authorized to do so, e. g., on the occasion of a canonical visitation, when presiding at a general chapter, etc. (c. 499, §2).

The local Ordinary—Religious arc also subject to the Ordinary of the place, saving those who enjoy exemption and to the extent that they enjoy exemption.

Religious women who are nuns need show no obedience to the local Ordinary if they are subject to regular prelates, and to the extent that they are so subject. No community of religious women other than nuns may claim subjection solely to an organization of religious men, nor may any male religion claim a privileged supervision and spiritual direction of religious women short of an Apostolic induit. But they may ask that the Ordinary appoint them the confessors and chaplains of the sisters, and the Mother superior can seek out any religious man for counsel in administrative difficulties (c. 500).

B. Authorities within the Religion

These are: 1) individual superiors; 2) chapters; 3) councils.

(1) *Individual Superiors*

A superior, as distinct from the chapter or council, is an individual religious who can command obedience. Who these superiors

arc must be learned from the constitutions of the religion. In religions with a centralized form of government, the general obtains authority over the members of the entire religion, the provincial over all the religious of the province, the local superior over all subjects in the house (c. 502).

In addition to superiors we find individuals charged with external discipline, although they can hardly be called superiors with the power to command, but may be called officials since they have an office with definite rights and duties. Who these officials are depends on the constitutions. But common to many religions are the oeconome and the procurator general, and of these alone does the Code make mention.

The oeconome *{oeconomus),* who may also be called the procurator, bursar or treasurer, is that official who has charge of the temporal goods of the religion. He must exercise his authority within the limits of the constitutions and under the authority of the superior, namely: under the authority of the general if he is the general oeconome; of the provincial if he is the provincial oeconome; under the authority of the local superior if he is the house procurator. His main functions are to accept and deposit in safe-keeping all money, to keep the financial accounts, and to make expenditures within the limits of his office (c. 516, §2-4).

The procurator general (not to be confused with the general oeconome) is the religious who transacts all affairs between his religion and the Holy See. It is his office, e.g., to procure induits, dispensations and other rescripts. Every male religion of papal law must have a procurator general (c. 517), and he must reside at Rome (C. S. Rel. June 4, 1920; *Acta* XII, 301). Religious women do not have a procurator general. They obtain all necessary rescripts from the Holy See through the local Ordinary, or their cardinal protector, or some agent of their own choice who resides at Rome.

(2) *Chapters*

(c. 501)

The absolute authority of individual superiors is limited by chapters and councils. We shall first consider the authority of chapters.

A chapter is a select body of religious with authority to deliberate by vote on the more weighty matters of the religion, e. g., appointment to offices, modification of the constitutions, important financial transactions, etc. The affairs calling for the deliberation

of the chapter are determined in the common law and the constitutions.

According to whether the matter to be decided affects the whole religion, or the province, or an individual house, wc have general chapters, provincial chapters, and local (house) chapters. Their respective competency is determined partly by the common law, partly by the constitutions. Usually the general chapter elects the general, receives the accounts of the preceding general administration, and passes new decrees or rules for the entire religion. In like manner the provincial chapter elects the provincial, except where the provincial is appointed by the general, reviews the reports of the former provincial administration, and enacts rules for the province. Local or house chapters convene more frequently, often monthly, and hear the financial reports since the last chapter, and authorize expenditures which exceed the powers of the local superior (c. 501).

(3) *Councils*
(c. 516, §1)

Midway between the authority of the superior and that of the chapter is the authority of the council. Like the chapter, the council is a select body of religious whose function it is to advise the superior on matters less weighty than those calling for the deliberation of the chapter. Usually fewer members constitute the council than are found in the chapter. For this reason the council can be convened with more frequency and ease.

Both the common law and constitutions specify which matters should be submitted to the council, e. g., concerning the admission and expulsion of members, the alienation of goods beyond a certain sum, etc. Likewise, the common law or the constitutions will state whether the superior needs the *consent* or only the *advice* of his counsellors. The council proceeds as a board, and the majority vote prevails in accordance with c. 105, 101.

Even· general, abbot-president, provincial, and local superior of at least a formal house, must have his council. As to the number of counsellors, the mode of appointment, etc., this is determined by the constitutions.

§2. Nature of the Authority Exercised by Religious Superiors

Some religious superiors exercise only dominative authority, others enjoy jurisdiction as well.

Dominative power—Every religious superior, both in clerical and lay religions, possesses dominative authority over his subjects (c. 501, §1). This is an authority inherent in every private society by the natural law, for the natural law demands that in ever}' society, or group, order be maintained, and order cannot be secured without a commanding superior. It matters little whether the society or group arises from law, and is a necessary society, e. g., the family; or whether it arises from contract, e. g., between employer and employee, and is a voluntary society. Dominative authority is often called domestic or paternal authority since it resembles the power of master over his servant, and that of a father of a family over his wife and children. Commands issued by reason of dominative authority must be obeyed in virtue *of* the fourth commandment.

Religious superiors exercise dominative authority both over postulants, novices and professed members. In the case of postulants and novices their authority is derived from an implied contract, a contract contained in the tacit promise of postulants and novices upon their admission to respect the rules of the community. In the case of professed religious the authority of the superiors is derived from an explicit contract openly declared at the time of religious profession, as also from the explicit vow of obedience which religious pronounce. Hence, superiors can command professed religious not only in virtue of the fourth commandment relying upon the relations of a contract, but also in virtue of the second commandment relying upon the authority received from the vow. In most cases the superior commands professed religious only in virtue of the fourth commandment. Where he intends compliance in virtue of the vow, this must be expressly stated in some form or other.

By reason of dominative authority religious superiors and superioresses may prescribe whatever is necessary or useful for the community. They may issue precepts, admit and expel members, grant permissions, appoint to offices, administer the temporalities, and inflict punishments. And while in a community devoid of jurisdiction written permissions cannot be called rescripts in the strict sense, nor are their offices ecclesiastical offices in the strict sense, nor can strictly ecclesiastical punishments be inflicted, yet where the Code or the constitutions arc silent with respect to the mode of procedure, analogous interpretation may be resorted to in virtue of c. 20 to supply for the silence of the law, and whatever the Code legislates with regard to rescripts, offices, etc. may be extended to the dominative acts of the superior in non-exempt communities.

Jurisdiction—In a clerical exempt religion superiors possess jurisdiction over the members of their community no less than

dominative authority (c. 501). This jurisdiction extends to both the internal and external forum.

Superiors receive their jurisdiction (public sovereign authority) from the Pope. The fact that the religion has been withdrawn from the jurisdiction of local Ordinaries makes it imperative that jurisdiction be vested in the superiors, for religious in exempt religions cannot be free of all public authority in the Church any more than can a citizen be free from all political authority in the State.

But the fullness of jurisdiction is not vested in all superiors. Legislative power is exercised only by the general chapter. Dispensing powers are granted to the major superiors (Ordinaries). Judicial authority to set up court is likewise found only in the major superiors. Administrative authority is exercised by each superior within the limits of his office as defined by the constitutions. Punitive power is vested in the major superiors, i. e., the right to impose strictly ecclesiastical penalties, c. g., excommunication, suspension, etc. Local superiors may dispense from the observance of holydays and the laws of fast and abstinence (c. 1245).

As regards the internal forum, the jurisdiction of religious superiors in clerical exempt religions as determined by the constitutions is the same over their subjects as is that of local Ordinaries over their diocesans. They may hear the confessions of their subjects, and grant faculties to others to do the same. They may remove censures and irregularities within the limits of the common law and the constitutions (c. 875 ; 2253, n. 2, 3 ; 990).

In clerical exempt religions the superiors may appoint notaries in the strict sense. Since in these communities we find ecclesiastical offices in the strict sense, and superiors with jurisdiction, it is necessary that the secretaries who assist at elections, participate in trials, record suspensions, etc., be vested with all the powers of notaries for the external forum of the Church. It is a question of keeping the records of politically sovereign acts within the ecclesiastical society (c. 503). In religions other than clerical exempt religions, since these arc not political subdivisions in the Church but only private societies, their secretaries are not notaries in the strict sense; there are no court trials, but litigations are settled extrajudicially by the superiors, or judicially by the local Ordinary; neither are there strictly ecclesiastical punishments, nor appointments to or removal from offices in the strict sense involving conferring or loss of jurisdiction (c. 501, §1).

But even in clerical exempt religions superiors are strictly

forbidden to interfere in matters reserved to the Holy Office (c. 501, §2). Thus, they cannot proceed to pass judgment in charges against their subjects involving heresy, the crime *of* solicitation, etc. All such matters must be referred to the Holy Office.

§3. Election and Appointment of Superiors

Qualifications for office—The Code lays down only a few qualifications, and these arc for major superiors. The constitutions must be consulted for more stringent requirements, arid for the qualifications desired in local superiors.

As regards major superiors: 1) they must have been professed at least 10 years computing from the first profession; 2) they must have been born of legitimate wedlock, though legitimation by subsequent marriage of the parents suffices, excepting major superiorships in exempt clerical religions; 3) the general superior, as also the superioress of nuns, must be at least 40 years old; and all other major superiors at least 30 years old (c. 504; 991, §3).

Term of office—Major superiors should be temporary, unless the constitutions permit a life tenure of office. Thus, the general of the Jesuits is elected for life; so too are abbots, some mothers general and superioresses of nuns (c. 505).

The length of the term, where the office is temporary, is determined by the constitutions. In many religions the general's term is for six, and the provincial's for three years. The Code does net prohibit reelection to the same office even indefinitely, but the constitutions may contain such prohibitions.

If the constitutions call for a temporary tenure this is to be applied also to the founder or foundress (S. C. Rel., Mar. 6, 1922; *Acta XiV,* 163). Where the constitutions disqualify a major superior for the same office after two terms in the case of the superioress general, or the superioress of nuns, the Holy See will be very reluctant to admit postulation for a third or fourth term, as is evident from a lengthy letter of the same Congregation addressed to local Ordinaries, Mar. 9, 1920; *(Acta* XII, 365).

Local superiors can be appointed or elected to office for a period not exceeding three years. They may be reelected or reappointed for another term of three years, but not for a third term immediately in the same house, save by Apostolic induit, i.e., by postulation (c. 505). Where a religious is appointed to fill the unexpired term of another, this need not be counted for one term, nor need it be computed as part term, but he may be given the same office for two more terms of three years computing from the usual time of filling offices. (Schafer, *De Religiosis,* n. 120).

The rule that local superiors may not hold office for more than two triennial terms applies equally to the heads of large schools, hospitals, etc., if they are superiors having under their authority religious as concerns religious discipline (Punt. Comm.. June 2-3, 1918; *Acta X,* 3+4). If frequent changes are found inconvenient a director, pastor, etc., may stay in office as director, pastor, etc., but not as religious superior. But the rule does not apply to the heads of so-called filial houses which are dependent upon some major house so that they have no independent administration, and the superior of the major house is also superior of the filial house, the person in charge of the latter house being merely his delegate (S. C. Rel., Feb. 1, 1924; *Acta* XVI, 95). Nor does it apply to the local superior of the only house of a religion, for in this case the superior is a major superior (Schafer, *De Religiosis,* n. 121, 14).

Mode of election—The Code has nothing to say about the manner of *appointing* to office. Where appointments replace elections, as often happens in the case of local or minor superiors, the constitutions must be consulted.

Nor has the Code much to say about *elections* in religions. The general rules covering elections and postulations are to be followed (c. 507). It must be remembered, too, that the general law can be modified by the constitutions insofar as these enlarge the common law by more stringent rules. Thus, e.g., the common law states that a relative majority of votes suffices in the third ballot, safeguarding particular law. But it may be that the constitutions admit a relative majority only after the 10th, 15th ballot, etc. (cfr. p. 132).

At general elections it is not advisable for the ex-general or any other member of the religion to preside at the election of the new general. It is different with the election called for choosing a provincial or minor superior, for in the first case the general being a higher superior can becomingly preside, and in the second case the provincial.

In religions of men the constitutions must be consulted to ascertain who the president at the election of the general should be. With all the more ancient regular orders having general headquarters at Rome, and with the general elections usually held at Rome, the presiding officer is often the cardinal protector.

In religions of women the Code itself authorizes the local Ordinary to preside both at the election of the superioress of nuns and of the mother general in Congregations (c. 506).

As regards nuns the local Ordinary presides at the election of

the superioress, unless the nuns arc subject to a regular superior in which case the latter presides. But here too the local Ordinary must be notified of the impending election, and if he chooses to be present either in person or through a delegate, he or his delegate may preside (Pont. Comm. Nov. 24, 1920;. *Acta* XII, 575; also Pont. Comm. July 30, 1934; *Acta* XX\ I, 494). The tellers at these elections may not be the ordinary confessors, but two other clerics who accompany the local Ordinary should act as tellers (c. 506).

The local Ordinary presides at the election of the mother general in all Congregations, both of papal and diocesan law. But if the religion is of papal law, the local Ordinary simply presides; he does not vote, for lie is not a member of the electoral body. But in Congregations of diocesan law he may rescind the election for a good cause according to his conscience. In this case he orders a new election, or ballot. He may not appoint the mother general, save where this right devolves upon him in virtue of c. 161, 178 (c. 506, §4).

In the case of a Congregation of *diocesan* law which has spread to other dioceses, the local Ordinary who may preside is he in whose diocese the election is held. And it is the right of the mother general to designate the diocese of election (S. C. Rcl., July 2, 1921; *Acta* XIII, 481). Also in case of a religion of *papal* law it is the same local Ordinary in whose diocese the election is held who presides *{Conditae a Christo,* ch. 2, n. 1; *Fontes,* III, p. 564).

Whether the local Ordinary presides at the elections of superiors other than the general must be learned from the constitutions.

In female Congregations the tellers at the elections are two sisters of the community (c. 171, §1).

§4. Duties of Superiors

These are determined partly by the common law, partly by the constitutions. The duties of religious superiors all aim ultimately at the maintenance of discipline in the religion, and the spiritual perfection of the religious. We shall state briefly the duties of superiors as outlined by the Code.

Concerning residence—Major as well as minor superiors are bound to reside in their respective houses, i.e., the general in the gcncralate, the provincial in the mother house of the province, etc. They may absent themselves only insofar as the constitutions permit, e. g., on canonical visitations, for business purposes, etc. (c. 508).

Concerning the enforcement of discipline-—Superiors must enforce the law among their subjects, both the common law and the law of the constitutions. In particular they shall see to it that the vows are observed according to the spirit of the constitutions, and that the general obligations common to all religious are fulfilled, e.g., as to daily meditation, fréquentation of the sacraments, the divine office, enclosure, common life, etc.

Concerning the reading of the constitutions and decrees— Since laws will not be observed unless they are known, superiors must take care that the constitutions are read through every year in public. The same applies to any decrees which the Holy See may issue and order to be read in public. No such decree seems thus far to have appeared since the time of the Code. Decrees which had to be read before the promulgation *of* the Code, since these are now embodied in summary form in the Code itself, need no longer be read (c. 509).

Concerning quinquennial reports— At least once every five years a report on the statistical, disciplinary and financial condition of the religion must be submitted to the Holy Sec by: 1) the abbot primate; 2) the abbot president of a monastic Congregation; 3) the supreme moderator of ever}' religion of papal law. But a report to Rome need not be made by the superioress of nuns, nor by the supreme moderator of a Congregation of diocesan law, since these report to the bishop and are subject to his visitation (c. 510).

Generals of *Congregations* will answer the questionnaire of 105 questions as published for this purpose by the S. C. Rel., Mar. 25, 1922 *(Acta* XIV, 278), an official English translation of which is found in the *Acta* XV, 459, and given by Bouscaren in his *Canon Law Digest,* I, 284, *sq.* The supreme moderators of Orders will, in making their report, employ any form which seems best to them provided it informs the Holy See sufficiently concerning the spiritual and temporal condition of the Order.

Concerning canonical visitations— Partly that material for the quinquennial report may be obtained, partly to enforce the observance of laws and correct abuses or laxity which may have crept in, religious superiors always, and sometimes the local Ordinary also, must make a canonical visitation of the houses (c. 511).

The constitutions must be consulted to ascertain which superiors must visit the houses, how often, and in what manner. However, the Code observes that the visitor shall as a rule proceed paternally, i.c., in a kind manner admonishing, exhorting, giving instructions, etc., and his commands must in the meantime be observed in the event of recourse. Should the visitor proceed judicially as

outlined in Part I of Book IV of the Code, and this he can do only if he has jurisdiction in the external forum, then from his sentence appeal lies to the higher court *in suspensivo,* the sentence in the meantime being held in abeyance. Seldom docs the visitor proceed judicially (c. 513).

All religious are bound to speak the truth when questioned, but all need not be questioned. Superiors are not allowed to intimidate their subjects from speaking the truth, to transfer them to another house, or in any wav to impede the object of the visitation (c. 513, §1).

No limits arc set to the visitation of the religious superior. The latter, therefore, may inquire into every point of religious discipline, e.g., concerning the observance of the vows, rules and constitutions, common life, spiritual exercises, fast and abstinence, the enclosure, choir, conferences, the holding of chapters, the public reading of the constitutions and decrees, the fulfillment of Mass obligations, the administration of the temporal goods, the keeping of the financial books and other records, etc.

Some religious can be visited also by the local Ordinary. The local Ordinary must visit every five years either in person or through his delegate: 1) each monastery of nuns who are subject to him; 2) each house of a Congregation of diocesan law (c. 512, §1). No limits are placed as to persons or matters subject to this visitation.

Also, at least once every five years, local Ordinaries must in person or through a delegate visit: 1) each house of a clerical *Congregation* of papal law with respect to the church, sacristy, public oratory, and confessional; 2) each house of a lay Congregation of papal law with respect to the points mentioned in the preceding number, and with respect to certain points of internal discipline mentioned on p. 371 (c. 512, §2).

Local Ordinaries may visit canonically the *parishes* of regulars (c. 631). Establishments belonging to regulars other than parishes local Ordinaries may not visit, not even their non-parochial churches and public oratories, saving to inquire concerning the enforcement of particular regulations which they may have enacted to eradicate abuses in the matter of public worship (c. 1261).

Concerning catechetics and spiritual conferences—Local superiors must sec to it that the lay professed and the domestic help receive an instruction in *Christian doctrine* at least twice a month. Likewise a *spiritual conference* should be given at least twice monthly especially in lay religions (c. 509, §2, n. 2). In the novitiate the lay novices must be given catechetical instructions at least once a week (c. 565, §2). An instruction of the S. C. Rel. of Nov. 25, 1929

(*Jeta* XXII, 28) enjoins upon superiors of all lay religions to see to it that all novices and professed religious for some time after their profession receive instruction in Christian doctrine if they are later to be destined as teachers in schools or parishes.

ART. II

Spiritual Government in Religions

The external discipline of religious is entrusted to superiors, chapters and councils. The spiritual direction of religious belongs to confessors and chaplains; to confessors in the sacramental forum, to chaplains in the extra-sacramental forum.

In lay religions the spiritual direction must of necessity be separated from the direction of outward conduct, their superiors not being sacred ministers. In clerical religions, also, this separation is desired to some extent insofar as the law forbids superiors to hear the confessions of their subjects by way of habit, and insofar as the present law forbids the obligatory manifestation of conscience to the clerical superiors, which the former law had already forbidden in the case of lay religions. But the spontaneous revelation to the superior of one's conscience, i.c., of one's weaknesses, temptations, doubts, spiritual difficulties, etc., for the purpose of counsel and relief is not forbidden, and in some cases is highly commendable, as with novices. But ordinarily the religious reserves the manifestation of his conscience to his confessor (c. 530).

We shall speak: 1) of confessors; 2) of chaplains.

§1. Confessors of Religious

A. Confessors of Religious Men

Confessors in clerical religions— Superiors in clerical religions, being priests, can themselves hear the confessions of their subjects either by virtue of their constitutions in clerical exempt religions, or in virtue of faculties delegated by the local Ordinary in non-exempt religions. However, they should not do so habitually lest they be hampered in the external government of the community for fear of violating the sacramental seal, although they may hear the confessions of those of .their subjects who spontaneously approach them (c. 518, §2, 3).

Therefore, ordinary confessors to the exclusion of the superior shall be appointed in every house, their number depending upon

the size of the community. This rule is intended primarily for the convenience of novices and student clerics (c. 518, 1).

Delegation to hear the confessions of novices and religious in clerical *non-exempt* religions is granted by the local Ordinary (c. 874). Delegation to hear the confession of religious and novices in clerical *exempt* religions, as also the confessions of those seculars who live day and night (one day suffices) in the religious house as servants, pupils, guests or patients can be granted also by the superior, and the superior ought to grant faculties at the same time to absolve the religious from cases which may be reserved to them by the constitutions (875). We say *granted also by the superior,* because faculties granted by the local Ordinary suflice to hear the confessions of exempt religious and novices, and to absolve from cases reserved in the religion. And so, safeguarding the constitutions which may prescribe confession at stated times, any religious of an exempt religion may for the peace of his conscience confess to any priest having diocesan faculties, whether a secular priest, a priest of his own religion or of another religion, and this priest may absolve him from cases reserved in the religion (519). This liberty granted for the first time by Pius X through the S. C. Rel., .Aug. 5, 1913 *{/Ieta* V, 431) is a radical departure from the former law which required the permission of the regular superior before his professed subject could validly and licitly confess to a priest not of his own religion.

When the law uses the phrase *for the peace of his conscience,* this is never to be understood as a condition for validity of confession. At any rate, when one confesses seriously he always confesses for the peace of his conscience. It may be that he places more faith in the learning and virtues of a particular priest, that he feels more at ease when confessing to him, etc. One hardly confesses for mere pastime, or as a pretext for getting away from the house. For the rest, religious discipline must be maintained, and the superior's permission to leave the house must be sought where the rules, or custom, so prescribe. Provided truth is not violated, the superior need not be told that one is leaving the house precisely in order to confess.

Priests with diocesan faculties, while they may absolve from sins and censures reserved to the superior *by the constitutions,* may not absolve from censures reserved *by common laiu* to the major superiors (Ordinaries) save by explicit delegation of the latter, or in danger of death and other urgent cases as described in c. 2252, 2254 (p. 700, ff.).

It does not follow that, because every priest with diocesan facul-

ties can absolve from cases reserved by the constitutions,, such reservations are now a useless institution. A public case still remains reserved to the superior after sacramental absolution so far as the external forum is concerned (c. 2251) ; and if there is question of a reserved censure, the penitent must abide by the *mandate* of the major superior whom he will approach in due time after his confession.

Confessors in lay religions—In brotherhoods confessors both ordinary and extraordinary shall be appointed. The ordinary confessor hears confessions weekly, the extraordinary at least 4 times a year, usually during the ember weeks. If a brother desires a special ordinary confessor, the superior must accede to his wishes. And every brother may confess to any priest having diocesan faculties, safeguarding religious discipline (c. 528).

In exempt lay religions of men the superior proposes the confessor, the local Ordinary grants the confession faculties (c. 875, §2).

B. Confessors of Religious Women

In theory religious women enjoy less liberty in the choice of confessors than do religious men. The present law which dates from Feb. 5, 1622 (Greg. XV, *Inscrutabili; Fontes* I, 379) states in c. 876 that no priest, secular or religious, no matter what his office or dignity, saving cardinals, may hear the confessions of sisters or nuns or their novices without *special* faculties granted by the local Ordinary. Hence, even though a priest otherwise may have diocesan faculties for hearing confessions, even the confessions of women, he needs in addition special authorization for licitness and validity to hear the confessions of religious women and their novices. One reason for this law is the need of special direction for those striving after evangelical perfection, a direction which supposes a more profound grasp of the principles of ascetical theology which is not always found in the average priest though the latter he competent to give spiritual advice to the ordinary layman.

We say, *in theory* religious women enjoy less liberty, etc., for the law requiring special faculties for the confessors of religious women, while intended primarily for their spiritual welfare, could, unless modified in particular cases, become an intolerable burden upon their conscience. And so broadly is this law modified, as we shall see, that *in practice* the liberty of religious women in the matter of confession is hardly less than that accorded to religious men.

The Code distinguishes 5 kinds of confessors for religious women: 1) ordinary; 2) special; 3) extraordinary; 4) supplementary; and 5) occasional confessors.

Ordinary confessors— The ordinary confessor is he who hears the confessions: 1) of the whole community; 2) at frequent intervals, usually weekly.

Every house of religious women must be assigned an ordinary confessor by the local Ordinary. Saving exceptionally large communities, or for other reasons, e.g., a difference of language, there should be but one ordinary confessor for the house (c. 520, §1). This rule is an ancient one, and is aimed at preserving among the religious of one and the same house unity in spiritual viewpoint with its necessary effects upon unity in external discipline. Confessors are not necessarily infallible and divergent opinions are possible, e.g., concerning the obligation of the vows and the constitutions, concerning the advisability of superrogatory devotions, penances, relaxations from the rule, fasts, etc.

Special confessors— If some nun or sister for the peace of her conscience and to make greater progress in the way of God requests a *special* ordinary confessor, or spiritual director, the Ordinary should willingly grant her this favor. But he shall see to it that abuses do not arise from the concession, and if they do arise, he shall prudently eliminate them, always safeguarding liberty of conscience (c. 520, §2).

Extraordinary confessors— In addition to the ordinary confessor, the local Ordinary shall appoint for each house an extraordinary confessor whom the religious must approach at least 4 times a year if only to receive his blessing (c. 521, §1). If option were allowed in this matter, those religious who chose not to go to the extraordinary confessor could cause suspicion to fall on those who availed themselves of his visit.

Supplementary confessors— Besides the ordinary and extraordinary confessor, the local Ordinary shall designate other priests giving them special faculties, whom the religious may *call in* for confession without the need of recurring each time to the Ordinary for special faculties. If any religious should ask for one of these confessors, the superioress shall neither personally, nor through another, e.g., her vicar, neither directly nor indirectly, neither by word or act, deny the request, nor show displeasure in any way whatsoever (c. 521, §2, 3).

Occasional confessors— If notwithstanding the concessions contained in the provisions for ordinary, extraordinary, special and supplementary confessors, a religious woman wishes to confess to some priest without special faculties to hear her, this she may do on four conditions: 1) that the priest have diocesan faculties for hearing women (as is usually the case with us); 2) that the confession be

made for the peace *of* conscience; 3) that the sister approach the confessor; 4) that the confession be made in some church, or public or semi-public oratory (c. 522). As to the last two conditions a few words arc required.

'I'he sister must *approach* the confessor. This means that she must go to him, not he to her. In particular it would exclude the right to invite the priest to the religious house for the explicit purpose of confessing to him, unless he were one of the supplementary confessors. But even the whole community may confess to any priest who happens to drop in for a visit, or is called in, e.g., for Benediction, Mass, or any service other than that of hearing the confessions of the community. The sisters in this case are still considered as approaching the confessor, even when they confess to him in their own house, which they are not forbidden to do, as is clear from our next paragraph (c. 522).

The Code says that a sister may confess to the occasional confessor (one without special faculties) in *any* church, or public or semi-public oratory; hence also in their own chapel by logical inference, for these chapels of religious houses are always at least semi-public, not private chapels. An answer of the Pontifical Committee (Nov. 24, 1920; *Acta* XII, 575) goes further when it says that the confession may be made in any place lawfully destined for the hearing of the confessions of women. Now while women's confessions must ordinarily be heard in a confessional, and therefore by implication in some church or public or semi-public oratory, nevertheless c. 910, §1 permits that their confessions be heard outside of a confessional, consequently outside of the above sacred places, in case of sickness or for other reasons of real necessity. Asked whether such an extra-confessional place had to be one *habitually* designated for hearing confessions, the Committee answered that this was not required, but that it sufficed if the place were *hic et nunc* so designated (Feb. 12, 1935; *Acta* XXVII, 92). The same Committee on Dec. 28, 1927, answered that if the confession is made outside of the places here described, the confession is both illicit and invalid *{Acta* XX, 61). Such a case would be hard to conceive in view of the above answers.

In case of serious illness, which need not be danger of death, the sister may call in any priest of her choice and confess to him, provided he has diocesan faculties to hear the confessions of women, and this she may do as long as the illness remains serious. Nor may the superioress deny her this liberty directly or indirectly. Here the confessor can enter the enclosure in a monastery of nuns, (cfr. c. 600).

C. Qualifications and Appointment of Confessors

Qualifications—The ordinary and extraordinary confessors of religious women may be either secular or religious priests, but if religious they should have permission of their superiors to accept the office. They should excel in virtue and prudence. They should be at least 40 years old, unless the Ordinary judges otherwise for good reasons. Finally, they should not be men who have an office which gives them external authority over the religious lest the sacramental seal be endangered. Even though they have no such external authority, confessors, for the reason just stated, should not interfere in any way with the external government of the community, basing their suggestions upon what thev learn from the confessions (c. 524, §1,3).

Appointment—The local Ordinary appoints al! confessors of religious women and their novices, saving of course the occasional confessor whom the sister herself chooses and to whom the common law itself gives faculties. But in the case of nuns subject to a regular prelate, the latter proposes the confessor (usually a religious of his Order) and the local Ordinary grants faculties (c. 525).

Ordinary confessors shall be appointed for a term not exceeding three years. They may be reappointed for a second and third term in the same community in two cases: 1) if the Ordinary judges this to be fit, due to the paucity of competent confessors for religious; or 2) if the majority of the religious community, including those who in other matters have no right to vote, by secret ballot ask for the reappointment of the confessor. But those religious who dissent should be provided with some other confessor if they desire another (c. 526).

The ordinary confessor cannot be appointed to succeed himself as extraordinary confessor. But the extraordinary confessor may be appointed to succeed himself as ordinary confessor, (c. 524, §2).

For a grave cause the local Ordinary may remove both the ordinary and extraordinary confessor. He need not explain his actions to anyone save the Holy See if the latter requests an explanation. But the regular prelate should be notified of the removal if he proposed the confessor (c. 527).

§2. Chaplains of Religious

The spiritual direction of religious in the extra-sacramental forum belongs to the chaplain. And while nothing forbids appointing the same priest as confessor and chaplain, this is not usually done.

Appointment of chaplains—In *non-exempt* lay religions the

local Ordinary appoints the chaplain. If he gives the religious no chaplain, the pastor in whose parish the religious house is situated has full spiritual charge of the brothers or sisters (c. 529).

In *exempt* religions *of* nuns or brothers the superior chooses the chaplain, but if the latter is to preach, he must have faculties from the local Ordinary to do so. In the case of nuns subject to the regular prelate of the I Order, the latter designates the chaplain (c. 529).

Functions of the chaplain—The chaplain performs all sacred functions excepting pastoral functions. Hence he says Mass, distributes communion, preaches, gives benediction with the Blessed Sacrament, etc.

But some chaplains enjoy also parochial rights. These they obtain either from the common law, or from their letters of appointment. In the latter supposition the bishop exempts the religious house from the jurisdiction of the pastor to the extent of the functions assigned to the chaplains. We have seen elsewhere that the local Ordinary has the right to withdraw religious houses from the jurisdiction of the pastor (cfr. p. 260).

Whether a chaplain has parochial rights in virtue of episcopal faculties, and to what extent, must be learned either from the letters of appointment, or from the episcopal decree exempting the religious from the jurisdiction of the pastor. These are questions of fact rather than questions of law (c. 464, §2).

But the common law itself grants parochial rights in the following cases:

1) In all clerical religions the superior has the right and duty to administer the last Sacraments (Viaticum and Extreme Unction) to the professed and the novices, and to all seculars who live day and night in the religious house as servants, pupils, guests and patients (c. 514, §1). This same right the superior exercises with respect to the professed subjects and novices outside of the house, e.g., in a hospital, but not with respect to servants, pupils, guests and patients outside of the house (Code Comm. June 16, 1931; *Acta* XXIII, 353).

The superior also conducts the funeral of his professed subjects, house servants and novices, unless the novice had chosen his own funeral church. And the superior retains this right although the religious or novice should have died outside of the religious house, provided it is convenient to transport the body to the religious church or chapel, or if not, provided the relatives, or the community, are willing to stand the expenses of the transportation. But it belongs to the proper pastor to conduct the funeral services of those who

died in the religious house as pupils, guests or patients (c. 1221, 1222).

2) In the case of *nuns* it belongs to the ordinary confessor to administer the last sacraments to the professed and to the novices c. 514, 2). The confessor may commit this office to others if he wishes, e.g., to the chaplain. Both the ordinary confessor and his substitute can enter the enclosure (cfr. c. 600). But the chaplain conducts the funerals of the nuns and their novices (c. 1230. §5).

3) *In lay Congregations* the chaplain has no right to administer the last Sacraments, unless the religious house has been withdrawn from the jurisdiction of the local pastor (c. 514, §3). In the same way it must be determined whether the chaplain has the right to conduct the funeral services of the religious and their novices who die in the religious house, or whether this right belongs to the pastor (c. 1230, £5). Generally; however, it is the chaplain, as a matter of fact, who is given these rights.

ART. III

The Administration of Temporal Goods

In this article we shall confine ourselves to considering the temporal goods of religious as *moral persons,* namely, the goods of the religion, province and house. In Chapter V something will be said of the property rights of religious as *individuals.*

Although the general law on the administration of ecclesiastical goods will be treated in a later chapter (Bk. III, ch. XV), still they arc rules which the administrators of goods in a religion must keep in mind in addition to the peculiar prescriptions to be considered in the present article which are applicable to religions alone. Thus, it will be seen later how the civil law of the country has been adopted by the Church as concerns contracts, the various modes of acquiring ecclesiastical property will be considered, the validity of last wills lacking the formalities of the civil law will be mentioned, the obligations attaching to foundations and goods given in trust will be discussed, etc.

The Code 2t this place touches upon the following points only: 1) the property rights inherent in religions; 2) the authority of the officials having the administration of goods in a religion; 3) particular provisions concerning investments, alienations, financial accounts, and responsibility for debts.

§1. Property Rights Inherent in Religions

If the Catholic Church universal is by the will of her divine Founder a sovereign society independent of the State, it follows that private corporations within the Church which have received their charter from the competent ecclesiastical authorities arc likewise independent of the State, no less than are private civil corporations of one State independent of the control of a foreign State. What rights religious organizations have, then, is determined not by the State but by the ecclesiastical authorities. Among these rights, as a matter of fact, is that of acquiring and possessing temporal goods. And not only the religion, but also the province and the individual houses arc vested with independent rights of ownership, unless the constitutions rule otherwise (c. 531). For the constitutions may decree that the religion is altogether incapable of holding goods in its own name, as with the Capuchins. But where the province and houses as well as the religion can own property in common, as is usually the case, the general cannot claim right to the superfluous goods of the provinces, nor the provincial to the residuary goods of the houses, e.g., at the end of each year. At the most these superiors can impose a legitimate tax or assessment in accordance with the constitutions.

Although in theory religions are endowed with property rights by the Church, yet in practice, since most modern States refuse to recognize the divine origin and the inherent rights of the Church, and consequently the independence of both the Church universal and of her corporations, therefore, religions, provinces, and sometimes their houses ought to seek a civil charter of incorporation the same as dioceses and parishes. Once they obtain civil recognition as moral persons, and this is readily granted by the States of the American Union, then their property rights will be upheld by the civil courts of the land in accordance with the Code and the constitutions, both of which will be considered the by-laws of the religious corporations so far as they do not conflict with civil legislation.

§2. Administrators of Goods in Religions

Within the limits of their office, as determined by the constitutions, it belongs to the officials as well as to superiors to make expenditures and to perform acts of ordinary administration (c. 532, §2). Acts of ordinary administration are those for which the constitutions do not require that a higher authority be consulted.

The officials charged with the temporal administration are called économes by the Code. The constitutions sometimes refer to them as procurators, bursars, treasurers, etc.

§3. Rules of Administration

The goods of a religion, province or house shall be administered in accordance with the general rules of common law (cfr. p. 568), the particular regulations of the Code at this place (cfr. following paragraphs), and the prescriptions of the constitutions (c. 532, §1).

The particular rulings of the Code with reference to the administration of the temporal goods in religions concern the investment of monies, alienations, the rendering of financial accounts, and the responsibility for debts contracted.

Investments— By the investment of money we mean its conversion into more valuable forms of property, especially real estate, into interest bearing bonds, securities, etc. The depositing of money with a reputable bank need not be considered an investment, for although the bank pays interest on these deposits, yet deposits are made for other purposes, e. g., safe-keeping, the facilitating of business transactions through checks, etc.

The constitutions will determine which superiors, or officials, have authority over the investment of the money of the religion, province or house. In addition, the local Ordinary must be consulted, and his consent obtained:

1) By the superioress of a monastery of nuns, and by the superioress of a house of a religion of diocesan law for *all* investments, the former requiring also the consent of the regular prelate if she is subject to him (c. 533, §1,n. 1);

2) By the superioress of a Congregation of papal law, but only for the investment of money *which constitutes the dowry* of the sisters, not for other investments (c. 533, §1, n. 2). The reason for this greater independence in the case of sisters of papal law lies partly in the fact that being of papal law they render a quinquennial report to the Holy See, partly in the fact that unlike nuns they have a centralized organization with one superior exercising surveillance over the administration of all houses, whereas the superioress of nuns has no one to advise or restrain her save the local Ordinary and possibly the regular prelate of the I Order.

3) By superiors of all *Congregations* if the funds to be invested were given or bequeathed to the house for divine cult or charity to be exercised in the diocese, e. g., a school or hospital. Hence, the local Ordinary's consent is not required for the investment if the money was given to the religion, or the province, or to the house, and the donor did not request the exercise of these works in the

diocese; nor is the bishop's consent required by regulars, i. c., *Order* men (c. 533, §1, n. 3) ;

4) By all religious in charge of parishes and missions, whether exempt or non-exempt, whether regulars or not, if the money was given to the parish or the mission (c. 533, £1, n. 4).

The above rules apply to every *change of* investment (c. 533, §2).

Alienations— The conservative spirit of the Church is adverse to the alienation of church property, namely, to the transfer of its ownership, and to any act which tends to lessen her free control over such property, e. g., leases, mortgages, the contracting of debts for which ecclesiastical goods must be offered as collateral.

Therefore, because the goods of a religion are ecclesiastical goods, the legislator repeats at this place for the sake of emphasis what is said in a later part of the Code concerning alienation of ecclesiastical goods in general.

If the property to be alienated exceeds the value of 30,000 lire or francs (about $6,000), an Apostolic induit is required from the S. C. Rel. The same Apostolic induit is necessary to alienate any goods precious by reason of art, history or material. Finally the same Apostolic induit is required to contract a debt exceeding $6.000. Failure to obtain the Apostolic induit invalidates the above acts (c. 534, §1). Cfr. also the Apostolic Delegate's faculties p. 736, ff.

If the property to be alienated, or the debts to be contracted, do not exceed the value of $6,000, the consent of the religious superior, competent by the constitutions depending upon the amount involved, suffices together with the consent of the chapter or council as determined by the constitutions, this consent to be given by secret ballot. But in addition to the consent of the religious superior, that of the local Ordinary is needed by the superioress of nuns, and the superioress of Congregations of diocesan law, unless the sale or gift being so trifling, the constitutions permit the religious superior to proceed without such consent. The regular prelate's consent is also required if the nuns are subject to him (c. 534, §1).

In the petition for permission to contract debts, it must be stated just what the present outstanding debts and obligations of the institution are, otherwise the rescript of the Holy See, or of the Ordinary, will be invalid (c. 534, §2).

In no case may religious superiors permit that debts be contracted unless it is certain that from the customary revenues interest on the debt can be met, and that the capital itself can be liquidated or paid off within a reasonable time by means of a sinking fund, i. e.,

bv the setting aside each year of a sum of money for this purpose (c. 536, §5).

As concerns alienations by way of gift, these are not permitted unless: 1) they be made for reasons of charity or from some other commendable motive, e.g., gratitude; 2) they be authorized by the lawful superior, who in accordance with the constitutions may sometimes require the advice or the consent of his council or chapter (c. 537).

A letter of the Apostolic Delegate addressed to all religious superiors in the United States on Nov. 13, 1936 calls attention to the fact that the issuance of bonds or debentures on ecclesiastical goods, as well as the acceptance of annuities, must be classed as alienations, so that if these amount to over $6,000 an Apostolic induit is necessary. The letter is rather lengthy and every statement is important, but the scope of our work not permitting its reproduction in full, we refer the reader to Bouscaren. Canon *Law Digest,* where the letter is reprinted in its entirety *in hoc loco.*

Financial reports—Religious administrators, besides the report they must furnish their superiors at stated times in accordance with the constitutions, have a further obligation of rendering a financial report to the local Ordinary within the limits to be described:

1) Even· superioress of nuns must annually give a report concerning the entire administratioh of the monastery. And if the monastery is subject to a regular prelate, the report must be made to him likewise (c. 535, §1, n. 1);

2) On the occasion of episcopal visitation, or more frequently if the local Ordinary so rules, every superioress of sisters must render an account of the administration of the goods which constitute the dowries (c. 535, §2).

Moreover, local Ordinaries, when they wish, have the right to demand an account: 1) of the administration of all the goods of a religious house of diocesan law; 2) of the administration of goods given for public benefactions in the diocese, saving where thev were given to regulars; 3) of the administration of all goods given to a parish or mission even though entrusted to regulars (c. 535, §3).

Responsibility for debts—The moral person who contracts a debt is responsible for the same, whether this be the religion, the province or the house. Thus, the house cannot hold the province responsible for its debts (c. 536, §1).

Responsibility for debts incurred by *individual* religious rests sometimes on the individual, sometimes on the moral person. Where the religious acts as agent for his principal, e. g., the local procurator

for the house, the provincial for the province, and this either by explicit permission of the competent authority, or in virtue of, and within the limits of his office, it is the moral person who is responsible. And this rule even the civil courts will recognize, because the corporation is responsible for the authorized acts of its agents (c. 536, §2).

If a religious concludes a contract, unauthorized thereto, either because he lacks permission, or he exceeds the limits of his office, the religious alone is responsible so that the creditor cannot bring suit against the moral person, or corporation, of which the religious is a member. This rule, too, the civil courts will recognize in religious organizations which have been incorporated by civil law. But the creditor by civil law has the right of personal action against the religious himself. If the latter happens to have goods of his own, he must satisfy his creditor out of these. If the religious has no goods of his own, c. g., if he is a regular with solemn vows, then in practice, lest unpleasant notoriety and scandal result to the detriment of the Church in general and of religion in particular, the moral person, though not bound to, will usually answer for the debts contracted, and the delinquent religious will be corrected by the superior with deposition from office or some other suitable penalty (c. 536, §3).

Chapter IV

THE NOVITIATE

The novitiate is a term of probation which every candidate to the religious state must undergo for at least one year in a designated place called the house of the novitiate under the direction of a master or mistress of novices.

Understood as a *period* of probation rather than as a *place* of probation, the novitiate has a two-fold object: 1) to familiarize the candidate with the nature of religious vows, and the particular rules and constitutions of the religion so that he may decide whether or not he will be equal to the burdens of the religious life before actually taking his vows; 2) to acquaint the superiors with the character and disposition of the candidate so that they may determine whether the candidate will prove a fit and worthy member of the religion.

At one time the novitiate was a matter of option. Innocent IV' prescribed a novitiate year for the Dominicans and Franciscans. Boniface VIII extended the law to al! mendicant Orders. The Council of Trent made the novitiate year universally obligatory. The Code repeats the Tridentine legislation in c. 572, §1, n. 3.

In four articles we shall discourse on: 1) the requisites for admission to the novitiate; 2) the training of novices; 3) the canonical status of novices; 4) how the novitiate ends.

ART. I

Requisites for Admission to the Novitiate

These may be reduced to seven headings: 1) the postulantship; 2) eligibility of the candidate; 3) testimonial letters; 4) admission by the authorized superiors; 5) the dowry; 6) ascertainment of the candidate's freedom; 7) the spiritual retreat.

§1. The Postulantship

During the present century when, due to the spirit of false liberty which began to penetrate even within the monastery walls, petitions for dispensations from religious vows began to multiply in ever increasing numbers to the great scandal of the faithful, the Holy See, rather than extend the term of the novitiate, saw fit to require a pre-novitiate probation period called the postulantship *(postulatus).*

Common law requires the postulantship only in religions with perpetual vows. The reason is that if the vows should happen to be taken rashly in religions with only temporary vows, the religious is free to leave at the expiration of his vows without the need of a dispensation from them (c. 539, SI)· But whereas in religions of women all must undergo this probation period, in religions of men it is only the candidates to the lay brotherhood *(conversi)* who must do so. Clerical aspirants arc presumed to have studied under the direction of the religious superiors in a college conducted by the religion, and this prior to the novitiate, so that during their college years they may be considered postulants. It should he noted in passing that the postulant has not the same status as a novice; he has not yet been admitted to the religion; he is still asking to be admitted, hence he is called a postulant *(postulare,* to beg).

By common law the postulantship must last for six months. The major superior may prolong the term but not for more than another six months (c. 539, §1,2).

The postulantship must be served in the novitiate house, or in some other house of the religion where religious discipline is accurately observed (c. 540, §1).

Postulants must wear a garb distinct from that of the novices (c. 540, §2). It may be the secular garb of the laity, especially in the case of brother candidates.

Postulants require previous permission of the local Ordinary to be admitted into the monasteries of nuns. They arc held to the law of enclosure, and may not leave without permission of the Holy See save in extraordinary circumstances, or when they decide to quit and return to the world, or when they arc dismissed. Should they otherwise violate the enclosure, however, they do not incur the penalties of the law (c. 540, §3 ; S. C. Rel., Feb. 6, 1924; *Acta* XV1, 96).

§2. Eligibility of the Candidate

No candidate should be admitted to the novitiate who lacks a vocation to the religious state. A vocation to the religious state

(understanding this term in the technical sense explained above) is present when the following conditions are verified: 1) that the candidate is a Catholic; 2) that he is free from the impediments to be described directly; 3) that he is qualified physically, mentally and morally to sustain the burdens and obligations of the religious life in general, and of his own religion in particular; 4) that his intention is upright, namely, his primary intention should be to acquire spiritual perfection, though secondary motives are not prohibited. Some writers would add a fifth condition, namely, that the candidate experience a peculiar impulse or instinct for the religious life, as was the case with St. Aloysius and others. But since this element is too difficult to discover in the average candidate and its search would only lead to scruples, we may conclude that such element is not required. Besides, it is not contained in c. 538 which seems to determine the requisites of a religious vocation.

Concerning the first, second and third conditions for a religious vocation it belongs to the superiors to determine their presence in the individual candidate; concerning the fourth condition, namely, the upright intention, this is left to the conscience of the individual assisted by the advice of his confessor. It remains to see which are the impediments debarring a candidate from the novitiate either under pain of invalidity or illicitness.

The following cannot be admitted to the novitiate *validly* according to c. 542, n. 1:

1) Those who have adhered to a non-Catholic sect. The law intends those persons who, once having been Catholics, left the Church and joined a non-Catholic sect, even though they are now reconciled to the faith. Converts who were born and reared as non-Catholics, therefore, arc not intended, and these can be admitted to the novitiate validly and licitly (Code Comm. Oct. 16, 1919; *Acta* XI, 477). However, if the latter aspire to the priesthood in a clerical religion their admission would be illicit, as we shall sec.

2) Persons under 15 years of age;

3) Those who arc constrained by grave fear or fraud, or whom the superiors admit while they themselves are under these influences;

4) A married person as long as the marriage bond has not been dissolved. Hence, widows and widowers are not debarred. But married people need a dispensation from the Holy Sec if they wish to embrace the religious life. This is true even though their marriage has not been consummated. It is true also if the ecclesiastical authorities have granted a perpetual separation from bed and

board. It is true even though the one spouse consents to the other's entering the novitiate;

5) Those who are, or have been, professed in another religion. An Apostolic induit is required, as we shall see. to transfer from one religion to another. So too, an ex-religious who freely left the religion at the expiration of his vows, or who obtained a dispensation from his vows, evidences a lack of stability, and the Holy See will judge from the circumstances after being requested for permission, whether he may be admitted to another religion or not;

6) Those who are legally threatened with punishment for a grave offense of which they have been, or can be, accused. It is immaterial whether the penalty is threatened by canon or civil law. In both cases the candidate is suspected of embracing the religious life solely to escape the punishment, while at the same time there is danger of scandal to the religion in the event that the candidate should later be convicted of the offense;

7) Bishops, whether residential or titular, even though only designated by the Roman Pontiff and not yet consecrated or installed. In the case of a residential bishop it is argued that the welfare of his flock takes precedence over the bishop's desire for individual perfection. In the case of titular bishops it is not becoming that these renounce a dignity conferred upon them by the Roman Pontiff without first asking his permission to do so;

8) Those clerics who by a special ruling of the Holy See must take an oath to serve a certain diocese or mission. These can enter the novitiate, however, after their term of service expires. Certain colleges, especially at Rome, educate clerics at their own expense if the students, upon being admitted to the college, take an oath to serve a diocese or mission for a certain period after their ordination, e. g., for three years. This they promise in return for their education. On the other hand, clerics who, as in the United States and many other countries, are promoted to major orders with the title of *servitium diocesis* arc not intended here. Though these take an oath to serve their diocese forever, the oath here is but a canonical title for ordination, i. e., the diocese will provide for their decent support in return for their promise to serve the diocese. But they are not forbidden to seek another title *for* ordination, such as that of poverty, or common table in a religious Order or Congregation. The oath is taken in perpetuity or indefinitely, but only as long as they do not choose to substitute it for another canonical title.

The following are admitted to the novitiate validly but *illietly* (c. 542, n. 2) :

1) Clerics in major orders without the knowledge of their local

Ordinary. It suffices to notify the Ordinary of one's intention, his consent is not necessary, because it may not be withheld save in one case: if the Ordinary judges that grave harm to souls would result by the cleric's departure from the diocese, and that the harm can be averted in no other way than by the cleric's remaining. In practise this will be a rare case. That the cleric was educated at the expense of the diocese is no valid reason for withholding consent. The same law of the Code which in another place (c. 1355) directs that clerics be educated at the public expense provides in this place that they are free to embrace the religious state (cfr. Vcrmecrsch-Creusen, *Epitome Juris Canonici,* I, n. 634) ;

2) Those who have heavy debts which they cannot pay. The reason is lest the creditors suffer thereby, or the religion become involved in lawsuits and possible scandals. But the religion is free to assume the obligations;

3) Those who must render accounts, e.g., guardians; or who arc implicated in secular affairs, e. g., public officials, from which the religion may have reason to fear lawsuits and other annoyances;

4) Children whose parents are in grave want, and need their support. By parents the Code understands father, mother and grandparents. Here the obligation arising from precept is considered as taking precedence over a matter of counsel;

5) Parents whose children need their care;

6) Candidates for the priesthood in a clerical religion if these candidates are under some irregularity or impediment for orders. We shall see later what is meant by irregularities and impediments. Among these is illegitimacy, but it may be remarked that solemn profession removes this irregularity, not other irregularities and impediments, e.g., non-Catholic parentage;

7) Orientals cannot be admitted licitly into the novitiate of a religious organization of the Latin rite without permission of the S. C. for the Oriental Church. The reason is that this would mean a change of rite to which the Church is traditionally opposed. However, the permission of the Holy See is not required if the Orientals, without changing their rite, make their novitiate with the religious of the Latin rite preparatory to establishing houses or provinces of the same religion but in the Oriental rite, c. g., in the case of Jesuits of the Oriental rite (cfr. Code, Comm. Nov. 10, 1925; **J**cm XVII 583).

The above impediments to the novitiate are established by the common law of the Code. Whether the constitutions contain additional impediments must be determined by consulting the constitutions. Thus they may, e.g., debar illegitimates (non-priestly aspir-

ants), or persons who have exceeded a certain age limit, etc. By virtue of their quinquennial faculties the local Ordinaries of the United States may, under the conditions described in the same faculties, dispense from the impediment of illegitimacy and advanced age if these arc established by the constitutions (cfr. p. 729).

§3. Testimonial Letters

The superiors, before admitting a candidate to the novitiate, must make certain that he is eligible, i. c., that he is not detained by any of the impediments described in the preceding section. This certainty is obtained through testimonial letters.

Women aspirants must furnish an authentic certificate of baptism and confirmation (c. 544, $1). Moreover, the superioress shall make careful inquiry concerning their disposition and character (c. 544, §7). This information may be obtained from the candidate's pastor or from relatives and intimate acquaintances. Formal testimonial letters are not required save in two cases: 1) from the directress of the college from which the candidate was dismissed, or which she left of her own accord, if such a case is verified; 2) from the major superior of the religion in which the candidate may have been a postulant, novice or professed member (c. 544, S3). It is understood that in the case of a former or present professed member of another religion a dispensation from the Holy See is also necessary for admission to the new novitiate.

These testimonials arc required prior to admission to the novitiate. In practice, however, it will be found advisable to secure them before admission to the postulantship.

Men aspirants must, like women aspirants, furnish an authentic certificate of baptism and confirmation (c. 544, §1). Likewise, the superior must make careful investigation concerning the man's character. In addition to this informal inquiry, the Code insists on certain testimonial letters:

1) The testimonial of the Ordinary of the candidate's diocese of origin, i. c., the diocese in which the father was domiciled at the time of the child's birth, or in default of a domicile, where the father was quasi-domiciled, or if the child was of illegitimate or posthumous birth, where the mother was domiciled or quasi-domiciled. But if the aspirant left his diocese of origin before he was 14 years old, and has not returned to it since for the space of at least one continuous year, the testimonial of the Ordinary of the diocese of origin seems unnecessary (c. 544, §2) ;

2) Testimonials from each and every Ordinary in whose dio-

cese the candidate lived for at least one morally continuous year after reaching the age of 14 (c. 544, §2). The year will cease to be morally continuous by an absence of 30 days, continuous or intermittent. The testimonials mentioned in this and the preceding number are *not* required in the case of women aspirants, as may have been noticed. They are intended primarily to safeguard against admitting *married* men to the novitiate, a danger not so likely in the case of women. In practise the Ordinary will seldom be acquainted with the candidate; still he will demand the necessary information of the pastor in whose parish the candidate has lived, and to this end will probably furnish the pastor with a questionnaire. In the case of candidates who study in a preparatory college belonging to the religion which they intend to join, the testimonial of the Ordinary of this diocese docs not seem necessary, provided the candidate had not lived in the diocese outside of the college for at least one morally continuous year;

3) The testimonial of the rector of the seminary or college where the candidate may have studied (c. 544, §3). By college in this case, as in the case of women aspirants referred to above, one must understand higher institutions of learning under *ecclesiastical* management. The reason is that the Code requires that the rector give his testimonial under oath and after conferring with the local Ordinary, conditions which are not easily verifiable in the case of rectors of lay colleges;

4) Testimonial letters of the major superior of the religion in which the candidate may have been a postulant, novice or professed member (c. 544, S3). These would seem to suffice so that the testimonials hitherto mentioned as required of male candidates would seem superfluous. The reason is that the major superior who issues the testimonial has already made careful investigation and obtained the necessary testimonials when admitting the candidate to his religion. But this is a mere presumption and must be verified. Moreover, we suppose that the candidate had not lived in the world, for ar least one morally continuous year after leaving the former religion ;

5) In the case of clerics who aspire to the religious life it suffices to obtain the certificate of the last ordination, and the testimonials of the local Ordinaries in whose dioceses the cleric lived after his last ordination for at least one morally continuous year (c. 544, §4). It may be presumed, in other words, that the baptismal and confirmation certificate, and the testimonials which otherwise would be required in the case of non-clerics were furnished to the responsible authorities prior to the ordinations; but if the

cleric came directly from a seminar}' or had belonged to another religion, the testimonials of the rector and major superior, according to the nature of the case, are also required.

Those who by law arc required to issue the above testimonials must give them not to the candidate himself but to the superiors, the baptismal and confirmation certificates possibly excepted (c. 545, SI).

The testimonials must be given under oath, e. g.: "In witness whereof 1 invoke the name of God, and hereunto set my hand and seal this ..... day of ....., 19....." If the individuals, superiors or rectors, requested for testimonials, judge that grave reasons forbid them to comply with the request, they must within three months explain their reasons to the Holy See. At the same time they might inform the requesting religious superior that they took this course. If they do not reply at all (they should reply within three months), the requesting superior should inform the Holy See of the matter, and Rome will judge what is most advisable to do in that case. If they refuse to give the testimonial *under oath,* the local Ordinary, or in the case of clerical religions the general superior, shall force his subject to issue the testimonial under oath by threatening penalties, not excluding privation of office (S. C. Rcl. Nov. 21, 1919; *Acta* XII, 17). If they reply that the candidate is not sufficiently known to them, the requesting superior shall make inquiry in some other way if possible, e. g., by questioning relatives and friends of the aspirant (c. 545, §1, 2, 3j.

Preferably the testimonials might assume the form of answers to questionnaires formulated by the religious superior. They should, as far as possible, testify concerning the following points, which points may be incorporated into the questionnaires: 1) the candidate's birth and origin, e. g., whether he is a legitimate child, the character uf the parents, etc.; 2) his habits and disposition, e. g., whether he is pious and religious, or rather whether he is given to vice, uncontrollable temper, drink, incontinency, etc.; 3) his talents, or mental abilities, academic achievements, etc.; 4) his past and present profession or occupation in the world; 5) his reputation; 6) his social status, e. g., whether married or single, burdened with debts or not, etc.; 7) whether he is the object of a lawsuit, criminal or civil; 8) whether he is under any irregularity or impediment for ordination in clerical religions; 9) whether he has a position of trust or a secular business or office which demands a rendering of accounts; 10) whether his family needs his help; 11) for what cause did he leave or was dismissed from the seminar}· or college (if such is the case), etc. (c. 545, §4).

To safeguard the good name of the candidate, and to secure the author of the testimonials against possible lawsuits, all those who obtain information through such testimonials, e. g., the superior, the chapter, the council, etc., are bound to the strictest secrecy concerning both the information given and the identity of him who issued the testimonial (c. 546).

§4. Superiors Authorized to Admit Novices

The right to receive candidates to the novitiate belongs to the major superiors as determined by the constitutions, c. g., the general, the provincial, the local abbot, the superioress of a monastery of nuns, etc. But the major superior must first confer with his council or chapter as the constitutions specify. Whether the vote of the council or chapter is deliberative or merely consultive rests with the constitutions (c. 543).

The Code, unlike the *Conditae a Christo* (Dec. 8, 1900; *Fontes,* III, n. 644) docs not expressly authorize the local Ordinary to admit candidates in religions of diocesan law. However, it would seem that he retains the right of veto against the admission of undesirable candidates. But he cannot compel the religious superiors to admit novices whom these reject.

§5. Dowry of Religious Women

Before being admitted to the novitiate all postulants in *monasteries* of *nuns* must furnish a dowry, or at least pledge a dowry in some form of legal document recognized as valid by civil law. This is a sum of money, bonds, real estate, etc. interest from which will serve to maintain the professed in the necessities of life. The amount of the dowry is determined by the constitutions (c. 547, Si, 2).

In *sisterhoods* (Congregation with simple vows) the dowry is not required by common law, but it is often required by the constitutions. Sisters, not being under papal enclosure, are free to engage in teaching, nursing and other work which makes them self-supporting, which is not possible with nuns. If the constitutions call for a dowry, they will determine also the amount (c. 547, §3).

The dowry is not a price of admission to religious life, which would be simony; rather it is offered as compensation for the necessities of life.

During the novitiate the dowry remains in the ownership of the novice. The actual possession and administration of the same ought to he given to some third party who will act as trustee. If the constitutions prescribe that the novice pay for her novitiate

maintenance this she may do either out *of* the revenues of her dowry, or from other sources.

Simultaneously with first profession the ownership of the dowry, in virtue of canon law, automatically passes to the religion. However, this is only a conditional transfer of ownership. Should the religious leave, no matter for what cause, the dowry must be restored to her, i. e., the capital. But the interest which has thus far accrued goes to the religion as compensation for her maintenance (c. 551, §1). Should the religious by Apostolic induit transfer to another religion, during the new novitiate the interest passes to the new religion, upon her profession the dowry (capital) also. But in the transfer of a nun from one independent monastery to another of the same Order the dowry itself passes to the new monastery from the first day of transfer (c. 551,82).

Immediately upon the passing of the ownership of the dowry to the religion with first profession, the superioress, having conferred with her council, and having obtained the consent of the local Ordinary, shall invest the dowry in safe, legitimate and fruit-bearing titles (c. 549).

All dowries shall be administered in their entirety at the monastery of the nuns, or the mother house *of* the religion or province, as the constitutions determine. The mother general, or the mother provincial, as the case may be, shall assign to each house its portion of the revenues of the dowries. The local Ordinaries shall supervise the conservation of the dowries, and on the occasion of their visitation they shall require an account of the administration (c. 550). The) shall see to it that the dowries are not expended before the religious die, even for the building of a religious house, or the payment of the debts of the community (c. 549).

'I'he dowry cannot be condoned, not even in part, except by dispensation of the Holy See in religions of papal law. or by dispensation of the local Ordinary in religions of diocesan law (c. 547, §4). However, in virtue of their quinquennial faculties local Ordinaries in the United States may dispense wholly or in part from the dowry also in religions of papal law (cfr. p. 730).

86. Ascertainment of the Candidate's Free Will

To safeguard against her entering the novitiate through physical or moral compulsion, the local Ordinary, either in person or through a clerical delegate, e. g., the chaplain, must, one month prior to the beginning of the novitiate, question the postulant concerning her freedom, namely: 1) whether she is being forced or has been

deceived; 2) whether she understands fully the step she is about to take. This questioning, or examination, is called by the Code the *exploratio voluntatis* (c. 552).

This *exploratio* is required three times: once before the novitiate, once before first profession at the end of the novitiate, and once before perpetual profession.

The *exploratio voluntatis* is required only in religions of women. The reason is that men arc less likely than women to be forced against their will to enter a religion.

To afford the local Ordinary convenient opportunity, since there may be many houses in the diocese receiving novices or admitting to profession about the same time of the year, the superioress is bound to notify him two months in advance of the approaching admission to the novitiate or the first or final profession (c. 552, §2).

§7. Spiritual Retreat

All postulants, both men and women, must make a retreat of at least eight full days before beginning the novitiate. If the confessor judges it fit, they shall also make a general confession of their sins (c. 541).

ART. II

Training of the Novices

For the novitiate to be valid, as also the subsequent profession of vows, the novice must not only be free of the impediments described in the preceding article, but he must moreover be trained: 1) in the house of the novitiate; 2) for one complete and continuous year. For licitncss of the novitiate the novice must be trained: 1) under a special master or mistress of novices; 2) in the principles of religious life, and the knowledge of the rules and constitutions of the particular religious organization.

§1. The Novitiate House

Every religion must have its own houses of novitiate to be erected in accordance with the constitutions. But without special permission of the Holy See one and the same province cannot have two or more novitiates, lest unitv in spiritual direction be endangered (c. 554, §1,2).

The local Ordinary's permission is required and suffices to erect

novitiates in religions of diocesan law. But the Holy See's permission is required to establish a novitiate in a religion of papal law (c. 554, §1). This is true whether the novitiate is a structure by itself, or whether it is to be a part of an already existing religious house, one part to be reserved for the novices, as is generally the case.

If the novitiate is erected in an existing monastery, convent, etc., the novitiate part must be separated from the rest of the house where the professed live. In this case without special permission of the novice master, the novices shall have no communication with the professed nor these with the novices. However, the novices and professed meet in the common refectory and chapel as a rule (c. 564).

Since example speaks louder than words the superiors shall not place in the house to which a novitiate is attached any but exemplary professed religious (c. 554, §3).

If the novitiate year is passed outside of the novitiate house it is invalid, saving an Apostolic induit (c. 555, §1, n. 3).

§2. Duration of the Novitiate

For validity the novitiate must last one complete and continuous year (c. 555, §1, n. 2). If the constitutions call for a longer novitiate, c. g., two years, this additional novitiate is not required for validity unless the constitutions explicitly state so (c. 555, §2). The local Ordinary may dispense from the second year of novitiate in religions of diocesan law, if the constitutions do not demand the second year for validity. An Apostolic induit is necessary to serve the second before the first novitiate. (Code Comm. Feb. 12, 1935; *Acta* XXVII, 92).

The novitiate begins with the reception *of* the habit. In those religions which have no religious garb distinct from the secular clerical dress, e.g., with most clerics regular, the novitiate begins in the manner described in the constitutions (c. 553).

Complete year—The novitiate year is reckoned not by hours but by days. It is computed in accordance with c. 34, §3, n. 3, and this for validity (Code Comm. Nov. 12, 1922; *Acta* XIV, 661). In other words the first day is not included, but the novitiate is only then completed when midnight of the anniversary day (day *of* the same number) is passed. Thus, if the novitiate begins at 10 a. m. Aug. 15, 1947 profession cannot take place until after midnight between Aug. 15-16 of 1948.

Continuous year—The novitiate must be served continuously for a year without interruption. However, not every interruption will require that the novice recommence his novitiate, but the noviti-

ate is interrupted in the sense that it must be recommenced only in these cases:

1) If, *after dismissal,* a novice actually leaves the house, i.e., not only the novitiate part proper but the whole building with its premises (c. 556, §1);

2) If the novice leaves the house (understanding *house* as in the preceding number) without the permission of the superior, and with the intention of not returning. Here both conditions must be verified: 1) exit without permission; 2) exit with the intention of not returning. The intention to desert must be manifest in the external forum by words, acts or other circumstances. If nothing can be conjectured one way or the other, and the novice returns within a few days, many authors state that his quick return is a lawful presumption that he left with the intention to return, and the novitiate is not interrupted. But the novitiate is broken the very moment the novice leaves the house provided he leaves without permission and his intention not to return is certain (c. 556, §1);

3) If, even with the permission of the superior, the novice remains outside of the novitiate house for more thari 30 days, whether continuous or intermittent, and no matter for what reason, e. g., a flood, fire, confinement in a hospital, etc. (c. 556, §1). Also in the transfer of a novice to another novitiate of the same religion, if this requires more than 30 days, the novitiate is broken (Code Comm. July 13, 1930; *Acta* XXII, 365). The days must be spaces of 24 *continuous* hours. Hence repeated absences, even though these occur on more than 30 days, do not break the novitiate if the novice returns the same day. Hence, visits to a physician, walks out of doors, etc. arc permitted.

The novitiate is not interrupted by an absence of less than 30 days in the sense that it must begin anew. If the novice was absent continuously or intermittently more than 15 days (full days) hut less than 30, it is required for validity and suffices that he supply these days. If he was absent less than 15 days, the superior may prescribe that he supply these days, but this is not required for the validity of the novitiate (c. 556, §2).

§3. The Novice Master

The training of the novices shall be entrusted exclusively to the master (mistress) of novices (c. 559, §1).

The master (mistress) of novices shall be at least 35 years of age, and professed at least 10 years computing from first profession.

He shall be gifted with prudence and piety, and shall be conspicuous for religious observance. In clerical religions he shall be a priest (c. 559, §1).

Should the large number of novices, or any other just cause, render it expedient, the master (mistress) of novices shall be given an assistant. The assistant shall be at least 30 years of age, professed at least five years computing from first profession, and shall be possessed of all other necessary and suitable qualities. The assistant shall be under the immediate authority of the master of novices as concerns the government of the novitiate (c. 559, §2).

Both the master of novices and his assistant shall be free of those duties and occupations which would interfere with their care and training of the novices (c. 559, S3). Authors arc not agreed as to what offices are incompatible with the mastership of novices, e. g., whether the novice master can be the local superior at the same time, or procurator of the house, etc. The constitutions may determine such incompatibility more concretely. At any rate there is no question here of invalidating acts, but of illicit acts at the most.

The master of novices and his assistant shall be chosen in the manner described in the constitutions. If a fixed term of office is prescribed, they shall not be removed from office without a just and grave cause before the expiration of their term. They may be chosen repeatedly for the same office (c. 560).

The master of novices alone, to the exclusion of all other religious, saving the visitators and the superiors whom the constitutions authorize to interfere, shall have the right and duty to provide for the training of the novices, and to him alone belongs the government of the novitiate. However, in matters which refer to the general discipline of the house (of which the novitiate is but a part), the master of novices, his assistant, and the novices, arc subject to the authority of the local superior, e. g., they must obey the rules of the house as concerns the refectory, chapel exercises, leaving the house, etc. (c. 561, §1).

The novices are bound to obey the novice master and the religious superiors in virtue of the fourth commandment (c. 561, §2).

During the course of the novitiate year, and as determined more specifically by the constitutions, the novice master must give a report to the chapter or to the major superior concerning the conduct *of* each novice (c. 563).

§4. Education of the Novices

The novice master is gravely bound to exercise the utmost diligence that the novices are trained in the discipline of the religious life and in harmony with the constitutions (c.562)..

The novitiate year must have for its prime purpose: to mould the character of the novice by the study of the rules and constitutions, by pious meditation and assiduous prayer, by instruction in those matters which refer to the vows and virtues, and by practises and exercises conducive to the extirpation of undesirable habits, the control of passion and the acquisition of virtue. Moreover, lay novices shall be instructed in Christian doctrine at least once a week (c. 565, §1,2).

During the novitiate year the novices shall not be made to preach or hear confessions if they are priests, nor shall they be assigned to the outside work of the institute. Yet lay novices may within the religious house itself engage in the work of the lay religious, provided they arc not given principal charge, and provided the work does not interfere with the regular spiritual exercises prescribed for the novices (c. 565, §3).

The novices shall not devote themselves professedly *(dedita opera)* to literary, scientific, or artistic pursuits and studies (c. 565, §3). The cultivation of the religious spirit must remain the primary object of the novice's education. Yet, lest too many religious exercises tend to weary the novice, and lest he forget that which he learned in the past, it is not forbidden to conduct class work, and to permit the novices to study in private, provided this is done in modeiation. A decree of the S. C. Rel. of Aug. 27, 1910 *(Acta* II, 730), although now abrogated, may still serve as a directive norm. That decree permitted three classes of study a week, each class not to exceed one hour, language classes being preferable, although classes in other branches were not excluded. In addition, the decree permitted the novice one hour of private study each day.

Novices shall not be promoted to orders during the novitiate year (c. 567, §2).

They shall wear the religious habit which the constitutions prescribe for the novices (c. 557).

The novitiate made for one class of novices, e. g., the lay novices, will not be valid for another class of novices, e. g., the choir novices (c. 558). Hence, in the event that a lay sister should later wish to become a choir sister, she must first make the novitiate for choir sisters.

§5. Confessors of Novices
c. 566)

In religions of women the novices must be given an ordinary confessor, an extraordinary confessor and supplementary confessors, the same as the professed. And the same rules which we described concerning the necessity of special faculties for validly and licitly hearing the confessions of religious women apply also in the case of their novices (c. 566, §1). Likewise the novices in religions of women, no less than the professed members, may avail themselves of occasional confessors, and may ask for a special confessor.

In religions of men ordinary confessors must be appointed for the novices (c. 566, §2, n. 1). In addition, supplementary confessors should he given to them to whom the novices can confess whenever they wish to do so without the necessity of leaving the house (c. 566, §2, n. 3). They must be given extraordinary confessors who will go to them at least four times a year (c. 566, §2, n. 4). But in accordance with c. 519, a novice may licitly and validly confess to any priest having diocesan faculties, if he does this for the peace of his conscience, and safeguarding religious discipline. And it matters not whether the priest comes to the house on special request and hears all the novices. It is otherwise with female novices and religious women.

ART. III

Canonical Status of Novices

Novices enjoy the privileges common to clerics, namely, the privilege of the forum, the privilege of the canon, the privilege of exemption and the privilege of competencv as explained on p. 169, ft (c. 614).

Novices likewise share in the spiritual favors (indulgences) granted to the religion (c. 567, §1).

In exempt religions novices, like the professed religious, enjoy exemption. Hence, in jurisdictional matters the regular superior, and not the local Ordinary, governs them (c. 615).

Another privilege which novices have is that of making a devotional profession of vows before the expiration of the novitiate year in the event that they arc at the point of death. This privilege was granted originally by Pius V (himself a Dominican) to the novices of Dominican nuns, Aug. 23, 1570. Pius X on Sept. 10, 1912 extended the privilege to novices in all Orders, and Congrega-

tions, and in Institutes whose members live a common life in the manner of religious but without vows. The privilege has been renewed by the S. C. Rel., Dec. 30, 1922 (*Acta* XV, 156) under the following conditions:

1) The novitiate must have begun; hence, postulants do not enjoy it;

2) The profession must be made into the hands of the local or the major superior, or their delegate, e. g., the novice master;

3) The formula of profession is the same as that employed in the ordinary cases of profession, but the vows arc pronounced without reference to duration.

The novice so professed shares in all the indulgences, suffrages and spiritual favors of the professed, and he gains a plenary indulgence in jubilee form. But this is only a devotional and consolatory profession, not a juridical one. And so, if the novice recovers, his status is the same as it was before making the devotional profession, and he must complete his novitiate year, and at the end thereof repeat profession if he chooses to remain. If the novice should die intestate, the religion has no claim to the dowry, or to any other goods which the novice may have brought to the novitiate.

Even where a novice died without making the devotional profession, he is entitled to the same suffrages, both in nature and quantity, as the professed deceased (c. 567, §1). Constitutions which provided otherwise by distinguishing between various classes—postulants, novices and the professed—had to be revised to harmonize with the Code so far as the novices arc concerned (Code Comm. Oct. 16, 1919; *Acta* XI, 478).

Temporal goods of novices—During the novitiate a novice cannot validly renounce ecclesiastical benefices which he may have, nor temporal goods of any kind, neither may he encumber them with obligations, e.g., by mortgage (c. 568). The reason is lest the novice, having divested himself of his goods or the major portion of them, feel himself constrained against his will to make profession in order to gain a livelihood. A parochial benefice does not become vacant until one year after his profession (c. 584). In the meantime the parish is entrusted to another priest with the title of vicar.

A religious under simple vows retains the ownership of his goods, but his vow of poverty forbids him the free use of them. Consequently, every novice must, before taking his first vows (which are always simple, not solemn, vows), cede the administration of his goods to any person or persons of his choice, the cession to be effective as long as he will be under simple vows. Hence, if he returns to the world after profession, or if he makes solemn profes-

sion in course of time (namely in religious Orders) the cession of administration loses its force. Often the novice has no goods, and in this case he need make no provision concerning their administration. But should he later obtain goods, then, even if he is under vows, he may and must cede the administration of them as just described. And a new cession of administration is required as often as the religious comes into possession of additional goods which require administration (c. 569, §1, 2).

Likewise, before first profession every novice with temporal goods must dispose of their use and revenue (usufruct). This disposal he may make as seems best to him, i.e., either in his own favor, e.g., by directing that the interest add to his capital, or in favor of others, not excluding the religion. But if the constitutions deny him the right of free disposal, the constitutions prevail (Code Comm. Oct. 16, 1919; *Acta* XI, 478). Thus they may forbid that he dispose of the use and usufruct in his own favor, or state that he dispose of them only in favor of certain designated persons, or they may deny him the right entirely to dispose of the use and income by ruling that these automatically belong to the religion. If the novice had no goods, but later acquires goods, or if he had goods and acquires additional goods, he must make a new disposal of the use and usufruct of these goods each time (c. 569, §1, 2).

Every novice in a *Congregation* must, before first profession, make a last will of all goods which he has or will receive (c. 569, §3). If the civil law does not recognize the validity of this act, e.g., because the novice is a minor, the last will must be made all the same, and the religious must, as soon as the civil law impediment is removed (in this case as soon as he has reached the age of majority), draw up the will again in a form recognized by civil law. Novices in religious *Orders* do not make a last will. The reason for the discrimination lies in the fact that religious in Congregations are always under simple vows and forever retain the ownership of their goods, but as religious they ought to be free from the cares which such goods involve; hence, the last will is made before they become religious. On the other hand, novices in Orders will in course of time take solemn vows which will deprive them even of the right of ownership to their goods. Hence, 60 days before they take solemn vows they must renounce conditionally (namely on condition that solemn profession is made) all their temporal goods to whomsoever they please (c. 581). What goods come to them after solemn profession, no matter under what title, belong to the Order, so that no last will concerning their disposal need, or can, be made. Nothing forbids a *novice* in an *Order,* however, from

making a last will of his own accord if he has temporal goods. Such last will can be effective only until solemn profession, being then replaced by the absolute surrendering of all his goods.

The novice need not pay for his religious habit, nor for his maintenance in the novitiate, unless the constitutions permit the superiors to ask for compensation. If the novice leaves before making profession, everything which he brought with him and which has not been consumed (money, books, clothing, etc.) must be returned to him (c. 570).

ART. IV

How the Novitiate Ends

'l'he novice may leave the novitiate on his own accord at any time, since he has no juridical obligation to remain, for as yet he has taken no vows (c. 571, §1). Likewise the religious superior, or the chapter, is free to dismiss the novice at any time and for any just cause. No legal formalities, no trial, nor procedure is required. Nor need the cause *of* the dismissal be explained to the dismissed (c. 571, §1). If the novice's fitness is still doubtful at the expiration of the novitiate, the major superior may prolong the novitiate, but not longer than six months (c. 571, §2).

Once the novice is judged qualified for profession, and the novitiate term has ended, lie shall be admitted to profession without delay (c. 571, §2). Exceptional circumstances may, however, justify deferring the profession, e.g., sickness. But in this case the novitiate itself is not juridically prolonged.

The novice shall make a retreat of at least 8 full days before his first profession (c. 571, §3).

In religions of women the *exploratio voluntatis* is again conducted one month before first profession, in the same manner as described above for the postulant before beginning the novitiate (c. 552).

Chapter V

RELIGIOUS PROFESSION

After their period of probation has expired, and they arc judged worthy, novices arc admitted to religious profession. That is, they are permitted to take vows, and thus become full-fledged members of the religion.

Wc shall consider: 1) the nature of religious profession: 2) the various kinds of profession; 3) the requisites for valid and licit profession; 4) the renewal of profession; 5) the effects of profession; 6) the validation of profession; 7) studies in the clericates of the professed.

ART. I

Nature of Religious Profession

In general, profession means the open declaration or avowal of some fact, as when we speak of the profession of one's faith. In a more restricted sense it is the declaration of one's occupation or calling, as when we speak of the medical, or the legal profession. Religious profession, in general then, would be the open declaration by the individual that he pursues a higher spiritual life than the ordinary man, especially if he strives after evangelical perfection, whether with vows or not, whether in conjunction with common life or not. In this sense also the early hermits, and at present the members of III Orders secular, may be said to make religious profession.

But when *religious life* is understood technically, as we have thus far understood it, namely, as including common life, vows, rules, constitutions, etc., then *religious profession* acquires a more narrow meaning, and is defined as: *an open promise made to God, and accepted by the lawful superior in the name of the Church, to observe poverty, chastity and obedience in some approved religious organization in accordance with the rules and constitutions of the religion.*

As thus defined, religious profession contains a two-fold surrender: 1) the surrender of one's self to God through the pronouncement of the vows, and this is a spiritual holocaust; 2) the surrender of one's services and liberty to the religion together with the acceptation of this surrender by the superior, and this is a bilateral contract.

Viewed as a spiritual holocaust religious profession is also a quasi-contract between the individual and God. Viewed as a bilateral contract between the individual and the organization, religious profession promises obedience according to the rule and constitutions on the part of the individual, while the organization pledges itself to maintain and care for the religious.

ART. II

Various Kinds of Religious Professions

According to the nature of the vows which are taken, religious profession admits of a two-fold division: 1) simple profession and solemn profession; 2) temporary and perpetual profession.

By reason of the *invalidating* force of the vows we have either *simple* or *solemn* profession. Simple vows are those which render acts contrary to the vows merely illicit; solemn vows are those which render contrary acts both illicit and invalid, as was already explained (c. 579). Simple profession may be either temporary or perpetual; solemn profession is always perpetual. Simple profession is made in Congregations; in religious Orders we have solemn profession preceded by simple profession. Whether a particular religion admits of solemn vows or only simple vows, i.e., whether it is an Order or a Congregation, must be ascertained from the constitutions of the religion. Generally speaking, all the more ancient religions, i.e., prior to the 18th century, have solemn vows, namely, the monastic Orders, the Canons Regular, the mendicants and the Clerics Regular.

By reason of *duration* of the vows we have *temporary* and *perpetual* profession. Vows are temporary which are taken either for a limited time, e.g., for one, two, three years, until the twenty-first year of age, etc., or indefinitely, e.g., *as long as I live with the religion* (Code Comm., Mar. 1, 1921; *Acta XIII,* 177).

Canon 574 makes it obligatory that temporary profession be pronounced immediately after the novitiate in every religion where perpetual vows are taken. The vows should be taken for three years, or until the twenty-first year if the candidate will not be

twenty-one years old three years after his first vows. But if the constitutions prescribe an annual juridical (not merely devotional) profession, then it suffices that each year until the time arrives for perpetual profession the religious pronounce temporary vows to last only a year. But if a religious with perpetual vows transfers to another religion which admits perpetual vows, then after the completion of the novitiate in the new religion the religious at once makes perpetual profession, (c. 634).

Prior to March 19, 1857, novices in regular Orders of men took solemn perpetual vows immediately after the novitiate. On the above date Pius IX decreed that henceforth such novices should make perpetual profession of simple vows immediately after the novitiate. The Code rules that all novices anticipate perpetual profession with temporary vows.

ART. III

Requisites for Valid and Licit Profession

For the *validity of profession* (cfr. c. 572) :

1) The candidate must have the canonical age; this is the 16th year for first profession, and the 21st year for perpetual profession ;

2) He must be admitted to profession (permitted to make profession) by the lawful superior as determined by the constitutions. But the superior must first obtain the *consent* or the *advice* of his council or chapter, according to whether it is the *first* profession or *perpetual* profession (c. 575, §2) ;

3) A valid novitiate must have preceded, namely, eligibility of the candidate for the novitiate or freedom from invalidating impediments; the novitiate spent in the novitiate house and not elsewhere; a full and continuous novitiate year, etc.;

4) Temporary profession must have preceded if there is question of making perpetual profession (c. 574) ;

5) The profession must be made freely, without grave fear or coercion ;

6) The profession must be expressed in words; tacit profession, then, is no longer valid as formerly when profession could be inferred by presumption from the fact that the novice in course of time began to wear the habit of the professed, or voted in the chapter, with permission of the superior;

7) The profession must be received by, i.e., made into the

hands of, the legitimate superior as designated by the constitutions, or his delegate. If in certain sisterhoods of papal law no mention is made of the superioress but only of the bishop or his delegate, in this case the bishop, or his delegate, is the lawful superior to receive the profession, since he is considered as receiving a mandate thereto from the constitutions (Code Comm. Mar. 1, 1921; *Acta* XIII, 178).

For the *licitnets* of profession:

1) The first profession shall take place in the novitiate (c. 571, §2);

2) In every profession the rites or ceremonies prescribed by the constitutions shall be observed, e.g., the formula of words, the Mass, the veil, wreath, etc. (c. 576, §1);

3) The profession must be recorded, and the record signed by the professed and at least by him who received the profession, and the record or register must be preserved in the archives of the religion (c. 576, §2) ;

4) Notification of solemn profession must be sent by the superior to the pastor of the parish where the professed was baptized, so that the profession may be noted on the margin of the page in the baptismal register where the baptism has been entered. Should the professed later attempt marriage, the baptismal certificate which he must furnish, if properly drawn up, will disclose the fact of solemn profession and thus frustrate the attempted marriage. Also notification of simple profession must be sent where simple profession invalidates marriage (c. 57.6, $2);

5) There must be no delay between one profession and another at the expiration of the temporary vows (c. 577).

6) The *exploratio voluntatis* by the bishop or his delegate must precede perpetual profession in religions of women in the same way as it precedes first profession and admission to the novitiate (c. 552).

ART. IV

Renewal of Profession

When the time *of* the temporary vows has expired, there should be no delay in renewing profession, although such delay would not invalidate the subsequent profession (c. 577, §1).

The profession may be renewed at any hour of the anniversary day of first profession, i. e., the time is computed in accord-

ance with c. 34, §3, n. 5 since there is question here of repeating acts of the same kind. Thus, if first profession occurred at 10 a.m., Aug. 15, 1948, and the profession was made for three years, perpetual vows (supposing the 21st year has been reached) may he taken on Aug. 15, 1951, at any time of the day, even before 10 a.m. The rule is otherwise when computing the novitiate year, as we have seen, since here there is not a question of repeating acts of the same kind, but the reception of the habit and the making of first profession arc acts of different species.

Not only *may* the profession be renewed on the anniversary day, but it *must* be *then* renewed. The reason is that if the profession is delayed, if only for a day, the individual would be living among the professed but without vows, a condition which the law docs not tolerate.

This is not to say that the superior may not *prolong* the making of perpetual profession if he is not yet certain concerning the candidate's fitness for perpetual vows. He may prolong the time of temporary vows, but not for longer than another three years. At any rate the temporary vows arc not prolonged automatically by the superior's decree, but it is necessary that the religious renew temporary profession when his vows have expired, and for the length of time decreed by the superior (c. 574, §2).

Nor is the superior forbidden to *anticipate* the renewal of *temporary* profession. We say temporary profession, for he is not allowed to anticipate the taking of perpetual vows by even a day. For some religions, as we said, prescribe *annual* temporary profession; and it is here that the superior may for a just cause anticipate the next annual profession, but the anticipation may not exceed a month. It may happen that he wishes the profession to coincide with some major feast (577, §2).

In many religions the professed renew their vows annually out of mere devotion. This being a *devotional* and not a juridical renewal of profession, the superior may anticipate or prolong it for any cause at his good pleasure, and for any length of time.

ART. V

Effects of Religious Profession

When speaking of the effects of religious profession one must remember that these effects vary according to whether the profession is temporary or perpetual, simple or solemn.

§1. Diverse Effects of Temporary and Perpetual Profession

Concerning stability of membership—A religious who has made only temporary profession is free to leave the religion upon the expiration of his vows. A religious under perpetual vows may not leave without an Apostolic dispensation (c. 575, $1).

Again, a religious with temporary vows may be dismissed by the superior for reasons less grave, and after a procedure less involved, than that required for dismissing a religious with perpetual vows, as we shall see.

Concerning rights and privileges—Religious with temporary vows enjoy the same indulgences, privileges and spiritual favors as the perpetually professed members; and *if* they die while under temporary vows, they have a right to the same suffrages (prayers and Masses); cfr. canon 578, §1.

There is one exception. Temporarily professed members enjoy neither active nor passive voice, unless the constitutions expressly give them this right, which is true of necessity in religions which have only temporary vows. Religions which have perpetual profession usually reserve to the perpetually professed religious the right to vote (active voice) and to be elected to office (passive voice); cfr. canon 578, §3.

Concerning the rules and constitutions—The temporarily professed are bound no less than the perpetually professed to observe the rule and the constitutions.

Here, too, there is one exception. While the temporarily professed arc bound to attend choir, they are not held to the private recitation of the office should they have been absent from choir on any particular day (c. 578. §2).

Concerning benefices—All parochial benefices cease one year after first profession; all non-parochial benefices three years after first profession (c. 584).

Concerning loss of diocese—Only perpetual profession entails the loss of the diocese which the religious had in the world. This is important in the matter of ordination. If, e.g., a secular cleric in major orders joins a religion, and while still under temporary vows decides to return to the world, he must be accepted by the Ordinary in whose diocese he had been incardinatcd. But after he has made perpetual profession and leaves, he must find a benevolent bishop to take him in, for he has lost his diocese through perpetual profession (c. 585).

§2. Diverse Effects of Simple and Solemn Profession

Concerning the validity of contrary acts—Simple profession,

whether temporary or perpetual, renders acts contrary to the vows illicit but not invalid, unless it is otherwise stated in the constitutions (as with the Jesuits whose simple vow of chastity has annulling effects); solemn profession renders contrary acts both illicit and invalid (c. 579).

Concerning temporal goods—We shall consider first the effects of simple profession, and then the effects of solemn profession.

A religious with *simple* vows retains the ownership of his goods and the capacity to acquire additional goods. His vow of poverty merely prohibits under penalty of sin, but not under penalty of invalidity, the right to alienate, administer, use or enjoy these goods without the superior's permission (c. 580, §1).

As to *alienation,* the above religious may not give away his goods, or a notable part thereof during his lifetime (c. 580, §3; (c. 583, §1), but he may and must alienate them by last will during the novitiate, i. e., not only the goods which he then has, but all goods which may come to him in the future. In the meantime, and until his death, he retains the ownership of his goods which he thus wills by testament. He may not change his last will after first profession save by permission of the Holy See. or bv permission of the major superior if the case is urgent and time does not allow recourse to the Holy See, or by permission of the local superior if there is not time to recur even to the major superior (c. 583, n. 2).

Though the above religious may not alienate his goods during his lifetime gratuitously, he may transact an alienation of them on an onerous title, e.g., he may sell them, exchange them, etc. But this he should do through his administrator and with permission of the superior.

As to the *administration, use* and *enjoyment of* his goods, these arc forbidden the above religious under pain of sin without the superior's permission, although invalidity of acts is never at stake. Hence we have seen that during the novitiate the novice, if he has goods, must appoint an administrator, and must cede the use and revenues to whomsoever he wishes. If after first profession the religious desires to change administrators, or to dispose differently of the use and revenues of his goods, it suffices that he have the permission of his general, or the permission of the local Ordinary in the case of a simply professed religious in a monastery of nuns, and also of the regular prelate if the nuns are subject to the latter (c. 580, §3). But the change may not be made in favor of the religion if it affects a notable part of the goods, which according to some authors is one third, according to others one fourth. For this an Apostolic induit is necessary (Code Comm. May 15, 1936;

Acta XXVIII, 210). The reason is that there is probability of the superior exercising undue influence upon the religious, since he did not choose to thus favor the religion before his profession. But this reason does not appear present, and so an Apostolic induit is not required, if the religion was originally the beneficiary, or the administrator, and is now again appointed beneficiary or administrator upon the acquisition of new goods by the religious; or if the novice had appointed no administrator nor beneficiary of the use and revenues of his goods because he had no goods as a novice, and after profession, having come into possession of goods, appoints the religion the administrator of his goods, or the beneficiary of their use and revenue (income from capital).

Thus far we have been speaking of the temporal goods of a religious under simple vows, whether temporary or perpetual, which he acquires and holds in his own name. If the same religious is given goods for his religion and not for himself, or if he acquires goods by his labor after profession, these belong to the religion in ownership, administration and full use. The religious may not alienate them, use them, nor add them to his own goods. Thus, what a priest earns as a sacred minister (e.g., pastor), what a sister earns by teaching, etc., belongs to the community. The reason is that such was the understanding, expressed or implied, at the time of profession: the religious promised to turn over his earnings to the religion, and the religion oromised to support and care for him (c. 580, §2).

A religious at *solemn profession* surrenders his right to the ownership of all present and future goods. Whatever comes to him after solemn profession, whether intended for himself, as a legacy, gift, inheritance, etc., goes to the Order, province or house in ownership, no less than what he earns by his labor (c. 582, n. 1). Some Orders, e.g., the Capuchins, are incapable of ownership even in common, but the Holy Sec is the owner of their goods, although the administration is usually left to the Order. Whatever a religious in such an Order acquires goes in ownership to the Holy See (c. 582, n. 2).

Before his solemn profession the religious, being under temporary and therefore simple vows, has the same rights to his temporal goods as have the simply professed in Congregations. However, there are a few exceptions. The religious in this case may neither lidtly nor validly give away his goods before 60 days prior to solemn profession. Within 60 days of solemn profession he must renounce the ownership of all his present goods to whomsoever he wishes, parents, the religion, etc. But the renunciation is made conditionally

and becomes effective only with solemn profession (c. 581). The religious docs not make a last will as a novice; at least he is not bound to do so in view of the approaching solemn profession when, as wc said, he must renounce by an act *inter vivos* all his possessions, which act becomes effective during his life, i.c., with solemn profession, and not at his death ; it is not a last will. A last will implies that the religious retains ownership until his death, which is not true of a religious under solemn vows who surrenders the right of ownership at his solemn profession, so that what he acquires from then on, even by way of gift, goes to the Order and he may not dispose of the same. Of course, if he has goods as a novice he may make a last will of his own accord, but the testament will lose all force at the time of solemn profession. Similarly, if he has goods, he may and must during the novitiate appoint an administrator, and cede the use and revenues to whom he wishes, but these acts terminate and lose their effect at solemn profession when the renunciation *inter vivos* made within 60 days prior to solemn profession goes into effect, for then there are no more goods to administer, use or enjoy.

ART. VI

Validation of Profession

If religious profession was invalid, e.g., because of lack of age in the candidate, lack of a full novitiate year, etc., the invalidity is either certain or doubtful.

When the invalidity is certain—In this case the profession never becomes automatically valid by prescription, i.c., by mere lapse of time, but it is necessary that the religious renew profession supposing the impediment to have ceased, or to have been removed by dispensation. The Holy See may dispense with the renewal of profession, if the superiors judge this the better course, and if aware thereof, the religious consents to the *sanatio in radice* (c. 586, §1), or he may return to the world after an informal extrajuridieal declaration of the invalidity by the superior, no formal proceedings being contained in the Code or required for the case.

Wc have supposed in the preceding paragraph that the invalidity is certain in the external forum, i.e., provable by two witnesses or by an authentic document. If only the religious is convinced of the invalidity of his profession, e.g., he withheld internal consent and the invalidity cannot be proved in the external forum,

the religious may now give internal consent before God, and this suffices (c. 586, §2). Should he attempt to leave the religion without being dispensed from his vows, or before the expiration of his temporary vows, he will be considered a fugitive or apostate from religion, and will be liable to the penalties for such offenses as established by law.

Where the invalidity is doubtful—Here the religious should renew his profession as a precautionary measure *(ad cautelam),* or request a precautionary sanation of the Holy See, i.e., the validation without renewal of profession. If for grave reasons the religious prefers not to renew profession, or the religion prefers not to have him renew profession, the religious is not free to leave in the first case, nor is the religion free to dismiss him in the second case. But the matter, being doubtful, should be authoritatively settled by the Holy See. In the last analysis, where the religious is opposed to the renewal of profession, the Holy See will grant a dispensation from the vows *ad cautelam* (c. 586, §3).

ART. VII

Studies in Clerical Religions

If at this time the Code treats of studies in clerical religions it is because immediately after their first profession the aspirants to the priesthood begin their seminary course of philosophy and theologj·. Moreover, after the completion of their course they must continue their studies in the form of annual examinations and monthly theological conferences.

Seminary course—Each religion ought to have its own seminaries if possible (c. 587, §1). If this is not possible, rather than have the professed scattered and studying in various houses without a staff of competent professors, the religious must be sent to the diocesan seminary, or to the seminary of another religion or province, or to a Catholic university (c. 587, §3).

But where the religious arc sent away and there is no house of their religion nearby, they are forbidden to lodge in private homes, and must live in the seminar}·, or in some establishment in charge of priests and approved by the ecclesiastical authorities (c. 587, §4).

Concerning the curriculum of studies, the qualifications of the professors, etc., in religious houses of studies, the same rules obtain as those which govern seminaries in general, cfr. p. 541, ft. Particularly must the religious, like secular aspirants to the priesthood, take

a two years' course in philosophy and a four years' course in theology, and both courses must be gone through in the seminary (c. 589, §1). As to the humanities, these may be learned prior to the novitiate outside of the religion.

Since the seminary years may be regarded as a second novitiate in a broad sense, none but exemplary religious should be placed in the seminary as professors or otherwise. During the entire seminary course the religious shall be under the care of a prefect and a spiritual director. The latter may also be their ordinary confessor. Both shall guide the clerics in the way of religious life by timely admonitions, instructions and exhortations (c. 588, §1, 2). Finally, the superiors must see to it that in the seminary the religious exercises be observed with exactitude, i.e., with respect to daily Mass, rosary, meditation, frequent confession, etc. (c. 588, §3).

Junior clergy examinations—Religious priests must, upon the completion of their theology course, undergo an annual examination for *five* years in the various branches of sacred learning. This examination shall be conducted by learned Fathers of advanced age who can command respect; therefore, not by the young seminary professors. Exempt by law from the examinations are professors of theology, canon law and philosophy, says the Code. But authors include here under theology also the allied branches of scripture, church history, patrology, liturgy, etc. Others besides professors, the superior may exempt or dispense for grave reasons (c. 590).

Theological conferences—In every formal house there shall be held at least once a month the solution of a moral and liturgical case. In addition, the superior may prescribe a discourse on some dogmatic or other sacred doctrinal theme. All clerics of the house must attend, both those who are in their theology course, and those who have completed their course, unless the constitutions rule otherwise (c. 591).

It should be recalled at this time that religious in charge of souls are bound also to attend the diocesan theological conferences even though they attend the conferences held in their own houses. By religious with the care of souls are meant not only pastors but assistants *(vicarii cooperatores),* as the Code Commission declared on Feb. 12, 1935 (*Acta* XXVII, 92). But religious are not intended, nor need they go to the diocesan conferences, who merely have the faculties of the diocese to preach and hear confessions. But these, too, must attend the diocesan conferences if they have no cases in their own houses (c. 131).

Chapter VI

THE OBLIGATIONS AND PRIVILEGES OF RELIGIOUS

Religious profession gives rise to certain obligations and privileges which arc proper only to religious, and are shared neither by clerics as such, nor by laymen as such. Moreover, religious cardinals, bishops and pastors have by reason of their dignity or office additional obligations and privileges. Hence, in Art. I we shall speak of the common obligations of religious; in Art. II of their common privileges; in Art III of the obligations and privileges of religious cardinals, bishops and pastors.

ART. I

Common Obligations of Religious

These obligations arise from a twofold source: 1) the very nature of the religious state; 2) the positive law, whether this be common law or particular law, i.c., the constitutions of the religion. It is obvious that we can be concerned only with the obligations imposed by common law, and must leave the stud}· of the various constitutions to those whom such constitutions interest.

§1. Obligations Inherent in the Religious State

The religious state imposes three obligations: 1) to strive after perfection; 2) to keep the vows; 3) to observe the rule and constitutions.

Religious perfection—As everyone is bound to fulfill the duties of his particular state of life, whether this be the clerical state, the marital state, the medical or legal calling, etc., so, too, religious arc bound to strive after evangelical perfection.

However, in the last analysis it will be found that the duty of striving after perfection is not distinct from that of keeping the vows and observing the rule and constitutions. Hence, it may be

said that a religious by the very fact that he keeps his vows and observes the rule and constitutions of his religion is at the same time striving after perfection.

The vows—All religious, the superiors no less than the subjects, must keep the vows which they have professed (c. 593).

By the vow of poverty all religious without exception renounce the free and independent use, enjoyment and administration of temporal goods. It matters not whether the goods are their own, or those of the religion. Religious sin if without permission they arrogate to themselves the independent use, enjoyment and administration of temporal goods. Moreover, religious with solemn vows cannot appropriate to themselves «in ownership any goods whatsoever. The vow of poverty admits of parvity of matter, i.e., not every violation of the vow is necessarily a mortal sin.

The vow of chastity forbids under pain of mortal sin the voluntary indulgence, in venereal pleasure. It extends to the prohibition of internal and external acts, consummated and non-consummated acts. The vow of chastity does not permit of parvity of matter. Moreover, the solemn vow of chastity renders an attempted marriage invalid. And a married person cannot after religious profession licitly exercise his marital rights.

The vow of obedience does not in itself always require that the religious observe the rule and constitutions (cfr. next section). But it does require that the religious obey his superiors whenever they command in conformity with the rule and constitutions. This vow admits of parvity of matter. The superior's command binds in virtue of the vow when he makes it clear that such is his intention. Otherwise the obligation is to obey only in virtue of the fourth commandment. And sometimes a violation of the superior's command carries only a penal sanction, i.e., when by custom or usage the superiors are not wont to impose a moral obligation to obey, but only a penal obligation, i.c., the obligation to accept a penance in the event of a transgression.

Note—Concerning the obligations *of* the vows the reader may profitably consult the manuals of moral theology. In addition he may study the various Catechisms of the Vows which are given to novices. The ordinary confessor especially ought to be familiar with these obligations and he might profitably read through the constitutions of the religious organization for whom he has been assigned confessor.

The rule and constitutions—By their profession religious promise to observe not only the vows but also the rule and constitutions (c. 593).

In some religions the rule and constitutions bind under sin; in most religions they arc purely penal laws. If they bind under sin, the religious must observe them in virtue of the 4th commandment. If they are purely penal, the religious docs not violate obedience when he transgresses them, but he must submit to the penance which may be imposed.

§2. Obligations Arising from the Common Law

These obligations are not the same for all, hut the Code often distinguishes between religions of papal and diocesan law, religions with simple vows only, and religions with solemn vows, etc.

Clerical obligations— All religious, even lay religious, arc held to the common obligations of clerics as far as possible (c. 592). The observance of these duties serves to protect the decorum of the religious state no less than that of the clerical state. The positive obligations of clerics are repeated by the Code in the case of religious with more stringency, as we shall sec directly. As to the negative obligations, lay religious no less than clerics are forbidden to go bail for anyone, to practise certain unbecoming trades and arts, to indulge in games of chance, to bear arms, to engage in politics, to frequent theaters and taverns, to practise medicine and surgery, to accept political offices, to engage in business, to act as agents for laymen, to assume secular offices which involve the rendering of financial accounts, to act as lawyer or procurator in a civil court, and to act as witnesses in a civil court in certain cases (cfr. p. 180, ff).

While novices are not held to the obligations of clerics, they arc considered clerics as regards privileges, as wc shall see.

Common life— All religious must observe common life as regards habitation, food, clothing and furniture. This aids in the observance of religious poverty (c. 594, §1).

Therefore, whatever the religious acquire by their labors, superiors as well as subjects, belongs to the religious house, province or Congregation (Order); and all money and other negotiable instruments must be deposited with, and made part of, the common funds (c. 594, §2).

Opposed to the ideal of common life is the *peculium*. This is a sum of money assigned to a religious for his personal needs, which he may have in his keeping and spend according to his prudent judgment. If the *peculium* is acquired and administered with the knowledge and consent of the superior (dependent *peculium),* it is not incompatible with religious poverty, for the subject administers the *peculium* not in his own name but in the name of the superior,

and the *peculium* is always revocable at the will of the superior. During the past century the *peculium* had become a rather general institution in religious organizations as a result of the pensions given by the various European governments to those religious who had been expelled from their houses confiscated by the governments, bince, however, it is opjxised to tnc ideal of poverty, its continuance has been discouraged by the Holy Sec as well as by religious superiors repeatedly. At the present day the *peculium* has almost universally fallen into desuetude.

Exercises of piety—That the religious spirit may be continually nourished, the superiors shall see to it:

1) 1'hat their subjects make an annual spiritual retreat (c. 595, §1,n. 1);

2) 1 hat daily, unless lawfully impeded, they attend Mass, make meditation, and perform the other exercises of piety which the constitutions may prescribe (c. 595, §1, n. *2);*

3) That they go to confession at least once a week (c. 595, SI, n. 3);

4) '1 hat they receive holy communion frequently (c. 595, §2).

In regard to communion the superiors are exhorted to promote frequent and even daily communion among their subjects. On the other hand, they cannot force their subjects in this matter lest liberty of conscience be violated. Hence, if the constitutions prescribe certain days for the reception of communion, the constitutions must be considered directive and not mandatory on this point; therefore, neither can the religious be forced to go to communion on such days, nor can they be forbidden to communicate on other days. However, the superior in some particular case can forbid a religious who has caused grave scandal to the community, or has committed some grave external fault, to receive communion without first going to confession (c. 595, §2, 3, 4).

Since daily communion is now the universal practise in religious communities, religious ought to have the greatest freedom in going to confession. If notwithstanding this liberty a religious is so frail that the daily reception of holy communion could on the one hand expose him to the danger of sacrilege, and on the other hand his abstention from communion would endanger his good reputation, Vcrmcersch-Creusen suggest that such religious accustom himself to remaining away from communion at least once a week, and not always on the same day *{Epitome Juris Canonici,* I, under this canon).

The religious habit—As the external marks of deference and respect which the faithful owe the clergy by reason of their higher

calling arc better secured through the wearing of the clerical garb, so the same respect which the faithful must show religious is promoted by the religious habit.

Therefore, religious must wear the habit of their religion both indoors and out-of-doors, save in a case of urgent necessity, or where a grave cause excuses in the judgment of the major or local superior (c. 596).

In the United States religious men do not wear the habit outside of the house and church, and this in virtue of the III Plenary Council of Baltimore, n. 77.

The law of enclosure—As common life is the safeguard of religious poverty, so the cloister is the safeguard of religious chastity. *Formal* enclosure is the law itself which governs the exit from or entrance into religious houses. *.Material* enclosure refers to those parts of the religious house to which the law of enclosure extends. *Papal* enclosure is that enclosure the violation of which is punished with papal excommunication; *episcopal* enclosure is such as can be enforced by episcopal censures.

Papal enclosure is imposed only upon regulars, i. e., men or women with solemn vows. It must be observed in every canonically established house of the Order, regardless of the size of the community, i. e., regardless of whether it is a formal or non-formal house (c. 597, §1).

Papal enclosure extends to the whole house which the regular community inhabits, including the gardens, orchards and groves reserved for the religious. But it does not extend to the church, the sacristy, the hospice, or the parlor (c. 597, §2).

It is the right of the major superior to specify in the case of each house the boundaries of the enclosure or to change them. These boundaries should be indicated to the public in some conspicuous way, e. g., by the notice: *Private, Enclosure,* etc. In the case *of* nuns it is the right of the local Ordinary to mark the limits of the enclosure (c. 597, §3).

Papal enclosure is more strict for nuns than for regulars. Regulars violate the enclosure if they admit women, not if they admit men; and they do not violate the enclosure by egress. Nuns break the enclosure if they admit men or women, and they cannot leave their monastery without permission of the Holy See, generally speaking. However, the law is modified both for the regulars and nuns as follows:

1) Into the enclosure of regulars may be admitted the wife of the actual supreme ruler of the country together with her retinue. All other women are excluded, no matter what their age, or class

(e. g., relatives, friends), or condition (whether rich or poor, socially or politically influential or not, etc.). If the regulars conduct a college for their own student candidates, or carry on other works proper to their religion, e. g., a retreat house for seculars, a separate part of the house should be reserved for the regulars, and this part only is subject to enclosure. And although the other part of the building is not subject to enclosure, yet women should not be admitted save for a just cause and bv permission of the superior (c. 598, 599).

2) Into the enclosure of nuns no outsider may be admitted, regardless of age, sex, class or condition, save the following: 1) the local Ordinary on the occasion of the canonical visitation, and the same is true of the regular prelate to whom the nuns may be subject; 2) the confessor of a sick or dying nun; 3) the actual supreme ruler of the country, his wife and retinue; 4) cardinals; 5) postulants, with previous permission of the local Ordinary; 6) physicians, surgeons, carpenters, plumbers, gardeners, etc. whose services may be required; but the previous permission of the local Ordinary must be obtained; and the superiors may at the beginning of each year submit to the local Ordinary a list of the names of those whose services will probably be requis cd during the year, and if the Ordinary approves of these persons, his habitual permission suffices (c. 600).

3) Nuns are not allowed to leave their enclosure without permission of the Moly See, no matter what the pretext. However, this permission is not required in the case of imminent danger of death, e. g., by reason of fire, flood, etc., or in imminent danger of some very grave evil other than death (c. 601).

Since nuns cannot leave the monastery, they usually entrust their outside affairs to sisters called extern*. These take only simple vows, and thus are not bound to papal enclosure. The S. C. Rd. recently issued a text of statutes for these extern sisters, a summary of which is found in Bouscarcn, *Canon Law Digest,* II, p. 65.

Nuns who take only simple vows (as is the case generally in the United States) are not bound to the law of papal enclosure, but they observe only episcopal enclosure (Code Comm. Mar. 1, 1921; *Icta* XIII, 178).

Episcopal enclosure is mandatory in all religious houses of men or women where papal enclosure is not enjoined, therefore, in all houses of religious Congregations. It is called episcopal not in the sense that the bishop is free to enforce it or not, but in the sense that if he does choose to enforce the enclosure in some exceptional cases of grave abuse by means of censures, these will be episcopal, not papal, censures (c. 604, §3).

Episcopal enclosure is only passive, i. e., it merely forbids admission to the religious enclosure in the case of persons of the opposite sex. It is not concerned with the egress of the religious which is governed by a distinct law, cfr. next section. And even the admission of persons of the opposite sex is lawful with the sole permission of the superior, safeguarding abuses. But since persons *of* the opposite sex should not customarily be admitted, the limits of the enclosure should be assigned by the major superiors also in the houses of Congregations (c. 604, §1).

The law of residence—Lest they become tainted with the spirit of worldliness, religious should not wander outside of their houses more than is necessary. And while the superiors may permit the religious to *leave* the house, they may not permit them to *live* outside of the religious house save for a grave cause, c. g., to collect alms, to recover health, to study, etc. But superiors may not permit an absence *of* over six months save for the purposes of study. The permission of the Holy See is required for a religious to live for more than six months outside of a house of his religion, no matter how grave the cause, c. g., sickness, but saving the case of studies (c. 606).

A religious may, however, without permission of the Holy Sec remain longer than six months outside of his religion if he is discharging the sacred ministry or other works proper to his religion, c. g., as chaplain of a hospital, director of a seminar}', etc. Here the chaplain, director, etc., is considered living in the hospital, seminary, etc., as in his own religious house (Schafer, *De Religiosis,* n. 364).

Epistolary correspondence—Partly to exclude the spirit of the world, partly to safeguard the discipline of the house, religious can be compelled to submit to the superior for censorship all correspondence which they send or receive. This is implied in c. 611. It is often explicitly enjoined by the constitutions, although usage may tolerate the contrary practise.

However, exempt from the superior's inspection is all correspondence sent to, or received from the Holy Sec, the papal legate of the country, the subject's major superiors, his local superior, the local Ordinary if the religious is subject to him, and the regular prelate if the nun is subject to him (c. 611).

Moreover, in other cases charity urges the superior to exempt from his censorship at the request of the religious any correspondence of a very confidential nature, e. g., as between the religious and the

confessor, confidential family matters, etc. But the superior has the right and duty to see that the privilege is not abused.

Obligations of the sacred ministry—Superiors shall take care that their priests, to be designated by them (not by the bishop or the pastor) willingly lend their services especially in the diocese in which they are domiciled, but safeguarding religious discipline. Likewise the local Ordinary and the pastors should show themselves generous in requesting the help of the religious especially those domiciled in the diocese, both for the sacred ministry in general, and for the hearing of confessions in particular (c. 608).

Religious who have charge of parishes are subject to the local Ordinary in all matters which concern parish work. And if the local Ordinary issues instructions or prohibitions in parish matters, religious pastors, even though they are exempt regulars, are bound to obey no less than are secular pastors (c. 631).

Even though they have no parish, but only a non-parochial church or public oratory, (a supposition seldom verified in this country) religious have the following obligations in respect to the sacred ministry: 1) they may not conduct services to the detriment of the catechetical instruction or the explanation of the Gospel given in the nearby parish church on feast days, and so they should abstain if possible from services at such hours; and it is the right of the local Ordinary to judge whether the services conducted by the religious in their church or public oratory is thus detrimental or not (c. 609, §3) ; 2) they are exhorted to deliver a homily on the Gospel or a brief instruction in Christian doctrine at their Masses on Sundays and holydays of obligation, and are *bound* to do so if the local Ordinary so commands (c. 1345) ; 3) if the local Ordinary decrees it for a public cause, religious must ring the church bells, recite prayers and conduct other public devotions which he may prescribe, e.g., a special novena (c. 612).

The divine office—Religious as a rule arc bound to recite the divine office, both in clerical religions and lay religions, if not always in choir, i. e., in common, at least privately, if not the office of the day, at least the Little Office of the B. V. M.

To the private recitation of the office the common law obliges: 1) all religious in major orders; 2) all solemnly professed religious excepting the lay brothers and lay nuns (c. 135; 610, §3).

In some religions the office must be recited in choir. The Code does not state which religions have this obligation, and hence the pre-Codc legislation on this point still holds. Now in pre-Code davs those regular Orders which had been founded prior to the 16th century were considered as bound to choir *sub gravi,* and this either in

virtue of universal custom, the unanimous consent of authors, or the explicit prescriptions of the constitutions. Office in common for Congregations and for regular Orders founded since the 16th century was considered the exception.

In those religions, says the Code, in which the obligation of choir exists, the divine office must be recited in common in every house where there are at least four religious not actually impeded. If the constitutions state that less than four suffice for the obligation to exist, the constitutions prevail (c. 610, §1). Whether the Code intends that there is a moral obligation to hold choir even in Congregations, supposing the constitutions call for choir, is not certain. Many canonists believe that the obligation in Congregations is purely penal and binds no further than the other sections of the constitutions which are penal. At any rate, nuns who take only simple vows are bound to choir not in virtue of the common law but merely if their constitutions prescribe choir (S. Pen. Oct. 26, 1858). And in the same answer we read that those religious who, like the Visitation nuns, recite only the Little Office of the B. V. M., are bound to choir only *sub levi.*

The obligation of choir, where it exists, rests primarily upon the community. The individual does not sin gravely *if* he absents himself unlawfully from choir, unless by his absence he was the cause why choir could not be held. But the superior sins gravely whenever choir is omitted through his negligence (cfr. Manuals of Moral Theology).

Choir may be satisfied by the religious with simple vows in an Order. It may be satisfied even by the novices according to the majority of canonists.

Superiors cannot dispense their subjects from choir unless these are students or professors, which faculty is explicitly granted by c. 589, §2. Outside of this case the Code nowhere authorizes superiors to dispense from the common law on this point, saving major superiors who in clerical exempt religions have by c. 81 dispensing powers in urgent cases. Local superiors may declare the epikeia to apply, at the most, e. g., in case of illness. Upon this principle they may excuse the subject from saying office even privately. But standing dispensations from choir except in the case of professors and students, and standing dispensations from the private recitation of the office where these obligations are imposed by common law must ordinarily be obtained from the Holy See.

The *conventual* Mass must be said daily in all houses of religious men where there is an obligation of choir (c. 610, §2). It is called the conventual Mass because said in the presence of the

whole convent or community. It must correspond with the office of the day.

Even in religions of women the conventual Mass should be said every day if this is convenient, e. g., if the religious have a chaplain (c. 610, §2). The obligation just described is incumbent not only upon nuns, but in all Congregations of sisters who are bound by their constitutions to recite office in choir (Code Comm. May 20, 1923; *Acta* XVI, 113).

ART. II

Common Privileges of Religious

Prior to the time of the Code religious could acquire privileges not only by direct grant, custom and prescription, but also by way of communication. Communication of privileges was most frequent among mendicant Orders, e. g., the privilege of absolving from censures reserved by common law to the local Ordinary.

Although direct grant, custom and prescription are still legitimate modes of acquiring privileges in the case of religious, communication of privileges in future among religious is forbidden by c. 613, §1. But the privileges acquired by way of communication prior to the Code, religious still retain (Code Comm. Dec. 30, 1937; *Acta* XXX, 73).

And privileges which have been or will be granted to the I Order of Regulars continue to be shared by the II Order of nuns insofar as these are capable of sharing them, e. g., indulgences (c. 613, §2).

It remains to be seen which privileges the Code directly grants either to all religious or to a large section of them. These are: I) the privileges *of* clerics; 2) the privilege of exemption; 3) the privilege of enjoying diocesan induits; 4) the privilege of begging; 5) the privileges of abbots. The constitutions of the religion, and papal documents must be consulted to ascertain which privileges in addition to the foregoing are enjoyed by certain religions in particular.

§1. Clerical Privileges

All religious, including lay religious and novices, enjoy by common law the privileges of clerics, namely: the privilege of the canon, of the forum, of exemption, and of competency (c. 614; cfr. p. 169 ff.).

The religious no less than the clerical state is deserving of the respect of men. To safeguard the dignity of the religious state the Church surrounds it with the same privileges as she accords the clergy.

§2. Privilege of Exemption

Exemption defined—This is not to be confused with that species of clerical privileges in virtue of which clergy and religious are exempt from military service, and from civil duties alien to their state. By the privilege of exemption as peculiar to religious we understand the release of a religious organization, i. e., the professed members and the novices, from the jurisdiction of local Ordinaries and their immediate subjection to the Roman Pontiff.

In the days when the common law of the Church was not so well developed as at present, bishops felt themselves justified in interfering not only in the external activities of religious but even in their internal concerns. Such interference proved fatal to any attempts at realizing the ideals of religious founders, especially where this involved reforms within the Order or the engaging in missionary activities and works of charity. To secure for the religious a greater measure of self-government and self-direction the privilege of exemption was gradually introduced.

History of exemption—Exemption was first accorded individual monasteries who were striving to introduce reforms into their religious life, but who were hampered in this respect by their dependence upon the bishops. As the reforms gradually extended to entire monastic Congregations, these as well as the individual monasteries were given exemption by the Roman Pontiffs. This occurred somewhere in the 11th century.

The exemption first granted to monastic Orders was later communicated to military and mendicant Orders. Since the work of these Orders was more active in character than that of the monks, the privilege of exemption assumed more far-reaching consequences. Abuses naturally arose, and by the 16th century they had assumed such proportions that the Council of Trent was forced to restore to the bishops their original jurisdiction over religious in several matters. The Code substantially restates the limitations set upon religious exemption by the Council. These limitations we shall list below, and from such list the reader may gather what exemption meant to regulars in former times.

Present law concerning exemption—Only regulars enjoy exemption by common law, together with their novices. By regulars, it will be recalled, are meant religious in an Order which admits

solemn vows, whether Orders of men or women (nuns). Congregations do not enjoy exemption unless this privilege has been granted to them by special induit, e.g., the Passionists and Redemptorists (c. 615; 618, §1).

The exemption of regulars is both personal and local; personal because it accompanies the religious even outside of his house, local because the house is exempt from the visitation of the local Ordinary. But the local exemption can be either passive or active. It is passive only if the religious superior does not exercise jurisdiction outside of his house over non-religious subjects, and such is generally the case. It is active when the religious superior rules over non-religious subjects in his territory which has been separated from the diocese; the latter is the exemption of abbots *nullius* \ the former that of regular abbots *de regimine,* and of all other regular superiors, and it is of this that we now speak.

The exemption of regulars is the rule, so that where limitations are set to their privilege these constitute the exceptions and must be explicitly stated in the law (c. 615). We append herewith a summary of the cases in which the Code denies exemption to regulars:

The bishop may preach in the churches of regulars (c. 1343, §1); exercise the pontificals therein (c. 337, §1); and administer Confirmation (c. 792).

He may visit all institutions in charge of regulars as concerns the religious and moral training of seculars (c. 1382); consecrate their sacred places (c. 1155), bells (c. 1169, $5), and immovable altars (c. 1199, §2).

He may judge all cases reserved to the Holy Office, e.g., if a regular preaches heresy (c. 501, §2); and act as judge of first instance in all litigations between two or more different religions (c. 1594, §4). He may decide extrajudicially all controversies between religious concerning precedence (c. 106).

The bishop may *command* regulars: to recite certain prayers and to conduct other services which he may order for a public cause (c. 612); to ring the bells for a public cause (c. 612); to impart catechetical instructions (1334); to give a brief explanation of the Gospel or Christian doctrine on feast days in their non-parochial churches (c. 1345); to observe any regulations he may make with respect to divine cult (c. 1261); to take part in the public processions in the place (c. 1291, 1292); to conform to the diocesan fee for manual stipends (c. 831, §3); to abstain from divine services in their non-parochial churches at the hours where such services might prove detrimental to the instruction or the explanation of the Gospel imparted in the neighboring parish church (c. 609, §3); to pay the

tax for the diocesan seminary (c. 1356) and any extraordinary diocesan assessment if they have a benefice, e. g., a parish (c. 1505).

Without the bishop's *consent* regulars may not: erect a religious house (c. 497); erect a church or *public* oratory in any place of the diocese, but only in the locality of which he approves although the permission to erect the house in the diocese may have been given generally (c. 1162, §4); hear the confessions of any but their own professed subjects and novices (c. 874, §1,876); preach to any save their own professed subjects, novices and those who live day and night in the religious house as patients, servants, guests or students (c. 1338, 1339); reserve the Bl. Sacrament in their semi-public chapels (c. 1265, §1, n. 2); give Benediction with the ostensorium (c. 1274, §1); expose for veneration in their churches or chapels unauthenticated relics (c. 1279, §1); recite prayers or conduct devotions in their churches and public oratories before approval has been given to the prayers and devotions (c. 1259, §1); appoint a rector to a non-parochial church which belongs to the religious, but which is not attached to their house (c. 480, §2); publish indulgences granted to their churches before the indulgences have been published at Rome (c. 919, §1); receive ordinations from an outside bishop (c. 965); erect pious associations (c. 686); prescribe a particular garb to be worn by their sodalities in public functions, or change the garb (c. 703, §3); appoint a secular priest as chaplain or spiritual director for sodalities erected by the regulars (c. 698, §1); conduct public processions outside their church save during the octave of Corpus Christi (c. 1293); publish books, newspapers and leaflets (c. 1385, 1386); make the profession of faith as confessors, preachers or pastors into the hands of any one other than the bishop or his delegate (c. 1406, §1, n. 7); invest money given to the parish or mission, or to the regulars but intended for the parish or mission (c. 533, n. §4); accept goods in trust which were given fqr the benefit of the churches, inhabitants or pious causes in the diocese (c. 1516, §3).

Whatever concerns the care of souls and parish work subjects regulars to the local Ordinary (cfr. c. 631).

Personal exemption is lost by the regular who is found outside of his house without legitimate permission, e. g., in the case of a fugitive or apostate (c. 616, §1) and during this time he is the subject of the local Ordinary in whose territory he is staying. Likewise regulars who commit an offense outside of the house, and are not punished by their superior after the latter has been notified of the offense, may be punished by the local Ordinary, although they

left the house legitimately, and have returned there since (c. 616, §2). If abuses creep into a house of regulars, and the house is a formal one, and the superior after being admonished by the local Ordinary does not correct the abuses, the local Ordinary must refer the matter to the Holy See; but if it is a non-formal house, the local Ordinary may in the meantime correct the abuses which are a scandal to the faithful, although in neither of these cases do the regulars lose their exemption.

Finally, in whatever matters regulars are subject to the local Ordinary they may be punished by him for disobedience, but whether with censures is disputed (c. 619).

Internal exemption of Congregations—By common law all Congregations may be said to enjoy a certain degree of exemption, i. c., in regard to their internal affairs. Canon 618, §2 forbids local Ordinaries: 1) to change the constitutions of the religion, although in Congregations of diocesan law he may do so within the limits of c. 495, §2; 2) to interfere with their finances and temporal administration saving the exceptions of c. 533-535; 3) to dictate in matters *of* internal government and discipline, e. g., as regards appointments to offices, transfer of the religious, performance of religious exercises, etc., but saving the cases in which the Code *expressly* grants him this authority. However, without necessarily interfering in matters of internal government and discipline, the local Ordinary may always visit the houses of sisterhoods and brotherhoods (lay religions), and inquire concerning whether religious discipline is being observed according to the constitutions, whether sound doctrine or morals have suffered detriment, whether enclosure is observed and whether the sacraments arc frequented. And should he detect abuses of a grave nature, he can command the superior to correct them, and upon the superior's neglecting to abide by the instructions the local Ordinary may correct the abuses himself. But if the abuses must be removed at once, the local Ordinary has authority to do so, informing the Holy See of any action he may have taken (cfr. c. 618).

As to external matters, Congregations, unlike Orders, must look to the local Ordinary as to their immediate *political* superior. They owe obedience to the bishop in all external matters wherein the law does not expressly exempt them. They are subject to diocesan laws, censures and reservations. It is the local Ordinary who dispenses them from the common law, and who absolves them from sins and censures. That is, they obtain their faculties to hear confessions even *of* their own subjects from the bishop, and from him they receive faculties to preach even to their own subjects. If controversies arise

within the religion which call for judicial settlement they must be taken to the local Ordinary, e. g., questions of excommunication and suspension incurred by common law.

§3. Diocesan Indults

Another privilege which all religious have by common law is that of sharing in any dispensations from the common law which the bishop may grant to his diocesans. The dispensation can be used also by transient religious *(peregrini).* It can be enjoyed also by regulars, since the canon makes no distinction, and because what was intended originally as a favor (exemption) should not be turned to one's disadvantage (c. 620).

But the local Ordinary cannot dispense from the rule and constitutions. And so, if, e. g., he grants a dispensation from Friday abstinence and the religious, like the three branches of the 1 Order of St. Francis, arc bound also by their rule to Friday abstinence, the dispensation cannot be used (c. 620).

§4. The Privilege of Begging

By common law all mendicants may go begging for alms in the diocese in which they have a house, and this with the sole permission of their superiors. But they must be mendicants in fact, and not merely in name (c. 621, §1). Hence, those who by their rule are mendicants, but who have availed themselves of the privilege granted by the Council of Trent to possess property in common, are not mendicants in fact, and are not privileged to beg (Code Comm. Oct. 16, 1919; *Acta* XI, 478). Therefore, only the Franciscans, saving the Conventuals and to a certain extent the Discalccd Carmelites and the Jesuits arc privileged to beg with the sole permission of their superiors. But if these same mendicants wish to beg in a diocese where they have no house, the bishop of that diocese must give his written consent, and this together with the permission of the superior suffices, that of the Holy See not being necessary.

Other religious of *papal* law need a papal induit and the written permission of the local Ordinary (c. 622, §1) to beg alms. By begging *(quaestuatio)* is understood going from door to door, or approaching a large number of people. Soliciting alms by mail, or approaching only a few individuals is not considered *quaeituatio,* and a papal induit in such cases would not be required. Begging from door to door can easily give rise to abuses, scandal, relaxation

of religious discipline, and fraud. Hence the need of special induits and permissions. But regulars who arc not mendicants in fact, although they must be authorized by the Holy Sec to beg, need not the permission of the local Ordinary, and this by reason of their exemption.

Religious of *diocesan* law do not require a papal induit to beg. However, they need the written permission both of the local Ordinary in whose diocese they have their house, and of the Ordinary in whose diocese they wish to beg (c. 622, §2).

Laymen may not solicit funds for any ecclesiastical or charitable cause without an Apostolic induit, or without the written permission both of their own local Ordinary and of the local Ordinary in whose territory the funds are to be solicited (c. 1503).

Concerning the manner of begging let the religious observe the Instructions of the Holy Sec, particularly the decree of the S. C. Reg. et Episc. of Mar. 27, 1896 *(Fontes,* IV., n. 2029), and the decree of the S. C. Rel. of Nov. 21, 1908 *(Acta* I, 153, ,$.).

§5. Privileges of Abbots

There are two kinds of abbots: 1) those who govern a territory which forms part of no diocese, and these are called abbots *nullius;* 2) those who govern only their monasteries and these are called *abbates regulares de regimine.* We have spoken sufficiently concerning abbots *nullius,* and their privileges on p. 226. Since these also govern a religious community they arc at the same time *abbates regulares de regimine,* and have all the privileges of the latter, and more than these. The majority of abbots are mere *abbates regulares de regimine,* and it is with these that we are now concerned.

The abbot who simply governs a monastery in the capacity of a religious superior, once he is lawfully elected to office by his religious chapter, must within three months receive the abbatial blessing (found in the Roman Pontifical) from the local bishop.

After he has received this blessing, and provided he is a priest, he may confer tonsure and minor orders on his professed subjects, and on these alone.

He may hold pontifical functions with throne and canopy in his abbey church, and wear the pectoral cross and studded ring even outside of his church. He may not wear the purple skull-cap without special Apostolic induit (c. 625).

ART. III

Religious Cardinals, Bishops and Pastors

We shall now discuss the additional obligations and privileges proper to religious who are raised to some dignity outside of their religion, or who are made pastors.

No religious may be promoted to dignities and offices outside of his religion without the permission *of* the Holy Sec if the dignity or the office is incompatible with the religious state. The permission of the superior is likewise required. Where the Roman Pontiff directly confers the dignity or office, as in the case of the cardinalate and bishopric, he thereby dispenses from the need of the superior's permission. This is not true if the office or dignity is conferred by election of the cathedral chapter, or by episcopal appointment, e. g., the office of vicar-general. Here besides the Holy See's permission that of the superior is expressly required (c.626).

Where the dignity or office is not incompatible with the religious state, the superior's permission is again necessary, but suffices, and that of the Holy See is not required, as in the case of minor diocesan offices, e. g., synodal examiner and synodal judge, censor of books, etc., or where a religious is appointed pastor of a parish entrusted to the religion. It should be added that the office of pastor of a parish not entrusted to the religion is incompatible with the religious state since in this case the religious must live outside of his canonically established religious house. But the Premonstratensians are permitted to accept the charge of secular parishes without permission of the Holy See. We saw that a papal induit is required that religious may live outside their houses for more than six months, save for study.

Religious cardinals and bishops—A. religious who is made cardinal or bishop, remains a religious. He shares in the privileges of his religion, and is bound by his vows and the other obligations of his religious profession. But he is not held to those obligations which are incompatible with his newly acquired dignity (c. 627, §1). His vow of obedience remains, but it binds him to obey only the Roman Pontiff, and he is withdrawn from the obedience of the religious superiors (c. 627, §2).

Concerning the vow of poverty, a religious *residential* bishop who had lost the right of ownership, e. g., through solemn profession, cannot acquire the proprietorship of any goods, but all goods which he may acquire henceforth as residential bishop goes to the diocese in ownership, though he may use, administer and enjoy the income

from the goods. A *titular* bishop or cardinal who by profession lost the right to ownership, acquires all goods in ownership for his religion, though he may use, administer, and enjoy the income from the same (c. 628, n. §1). If right of ownership was not lost by profession, e. g., in a Congregation, a religious cardinal or bishop acquires all goods in ownership for himself, and may use, administer, and enjoy the income from the same, besides recovering the free use, income and administration of the goods which he owned as a religious (c. 628, n. 2). In every case it is understood that whatever goods come to a religious cardinal or bishop for other than personal reasons, must be disposed of and administered according to the intention of the donors, e. g., funds contributed for the erection of a hospital, orphanage, etc. (c. 628,n. 3).

If a religious cardinal or bishop abdicates his dignity or office, he is bound to return to his religion, and he may choose any house for his residence. But he lacks both active and passive voice in the religion thereafter. The reason is lest the liberty of elections be endangered by his dignity and influence (c. 629).

Religious pastors— A religious pastor (of a secular parish), or vicar (of a parish entrusted to his religion), must observe his vows and constitutions insofar as such observance is not inconsistent with his office. It belongs to the superior, not to the pastor, (or at least to the major superior if the pastor is local superior at the same time) to judge when the pastoral duties justifiably excuse from religious observance, e. g., leaving the religious house to take sick calls, to make social calls, or omitting common exercises for the same reasons, etc. (c. 630, §1,2).

As to his vow of poverty, this is tempered to the extent that he may accept, collect, administer and spend in accordance with the will of the donors, and under the vigilance of the superiors, any alms which are oft'ered for the benefit of the parishioners, the Catholic schools or pious places connected with the parish. But the superior, not the pastor, has the right to accept, retain in his keeping, collect, and administer money which is given for the construction, upkeep, repair and embellishment of the parish church, no matter from what sources this money may come, c. g., plate collections, pew rent, etc. If, however, the religion does not own the parish church, these rights of the superior belong to the local Ordinary. But in the United States where practically no parish church is owned by the religion, but by the parishioners themselves viewed as a corporation, religious pastors also collect, and administer the money given for the construction, upkeep, repair and embellishment of the parish church, and this either by tacit delegation of the local Ordinary,

or in virtue *of* centenary custom. And the reason is inherent in the very nature of our parochial system, since all money, from whatever source, is destined not for any particular use but for all parish needs and enterprises in general, and no distinction is made, nor separate funds maintained, *for* the school, works of charity, or the parish church (c.630, §4; also Woywod, o. *c.* on this canon).

In all matters which directly concern parish work, the religious pastor is subject to the local Ordinary no less than a secular pastor is. He may be removed by the local Ordinary as explained on p. 266. He must observe all the diocesan regulations which refer to parish work. He must give a financial report to the bishop of all parish funds (c. 535, S3, n. 2). He cannot exceed the bounds of ordinary administration as determined by the diocesan statutes, and must obtain previous permission of the local Ordinary for expenditures and the contracting *of* debts as defined in the statutes (c. 1527, §1).

As to his purely spiritual pastoral functions, e. g., baptismal rights, marriage rights, funeral rights, and the corresponding duties, *Afissa pro populo,* etc., his rights and duties are identical with those of secular pastors.

The religious pastor is subject to the visitation of the local Ordinary, as regards the church, sacristy, confessional, parish books and all matters affecting parish work. Also as regards his personal conduct as pastor, not as concerns his observance of religious life. And the local Ordinary, jointly with the superior, may punish the religious negligent in his pastoral duties no less than he can secular pastors (c. 631, §1, 2).

Chapter VII

DEPARTURE FROM A RELIGION

A religious who leaves the religious organization docs so cither through his own volition, or through compulsion. In Art. I we shall speak of voluntary departure from the religion; in Art. II of compulsory departure or dismissal.

ART. I

Voluntary Departure

Voluntary departure is either lawful or unlawful. We shall consider each in turn.

§1. Lawful Departure

Lawful departure takes place: 1) by transferring to another religion; 2) by leaving the religion at the expiration of vows; 3) by exclaustration; 4) by secularization.

Transfer to another religion—A religious cannot transfer to another religion, even to a stricter one, nor from one independent monastery to another monastery of the same Order, even in the case of nuns with simple vows, without permission of the Holy Sec (c. 632; Code Comm. Nov. 9, 1926; *Acta* XVIII, 490).

A religious who transfers to another religion must make a new novitiate and profession. During the new novitiate the vows pronounced in the former religion remain, not however the obligations peculiar to the constitutions, c. g., fasts. The novice must obey the superiors of the new religion, and the novice master in virtue of the vow of obedience (c. 633, §1). During the novitiate he wears the habit of the new religion (S. C. Rel. May 14, 1923; *Acta* XV, 289). If he does not make profession, he must return to his former religion, unless he had taken temporary vows in the former religion and these have in the meantime expired (c. 633, §2). But a religious who

transfers from one independent monastery to another of the same Order neither makes a new novitiate nor a new profession (c. 633, §3).

A religious with *perpetual* vows transferring to another religion where perpetual vows are taken must, at the end of the novitiate, immediately take perpetual vows. But the superiors may prolong his term of probation, not however longer than another year (c. 634). The vote of the chapter in this case is deliberative, not consultive (Code Comm. July 14, 1922; *Acta* XIV, 528).

Religious who transfer to another religion, or to another independent monastery of the same monastic Order, forfeit all the rights and privileges which were theirs in the former religion or monastery, and are freed of all the obligations of the former religion or monastery. These effects take place at the time of profession in the new religion, but from the moment of transfer if the religious merely passes to another independent monastery of the same Order. As regards temporal goods which were acquired through the labor of the religious, or which came to him in any way after he was solemnly professed, these belong to the former religion. Excepted only is the dowry. The ownership of this passes to the new religion from the day of the new profession, but from the day of transfer in the case of one who passes over to an independent monastery of the same Order. But where a sister transfers to a new religion, the revenues from her dowry belong to the new religion during the novitiate, provided the religion has the right by the constitutions to demand something for the board and lodging of the novice (c. 635).

If a religious with solemn vows passes over to a Congregation where only simple vows are taken, the profession which he makes in the Congregation is simple profession, unless the Apostolic induit permitting transfer rules otherwise (c. 636).

Departure at the expiration of vows—A religious may freely quit the religion when his temporary vows expire. 'Πιο reason is that no juridical bond holds him any longer to the religion. lienee, canon law will not consider him a fugitive or apostate from religion if he leaves of his own accord. What his *moral* obligation to persevere may be is a matter for him and the confessor to decide (c. 637).

Exclaustration—A third method of lawful departure from the religion is by way of exclaustration. By exclaustration is meant living outside of the religion *{extra claustra)* without dependence upon the religious superior. Because he is not dependent upon the religious superior, the exclaustrated religious differs from him who obtains permission to reside outside of the house of the religion for more than six months, e. g., because of infirmity, or temporarily managing

a secular parish, etc. In such cases the *status quo* of the religious is in no way changed from that which obtained before he took leave of absence, and the effects of cxclaustration to be described are not verified in his case.

'I'he induit of exclaustration may be granted only by the Holy See in religions of papal law. It may be granted also by the local Ordinary in religions of diocesan law (c. 638). In the latter case the effects of cxclaustration to be described apply equally as in the case of cxclaustration granted by the Holy See (Code Comm., Nov. 12, 1922; *Acta* XIV, 622).

The effects of exclaustration are: 1) the religious remains a religious: he is not dispensed from his vows as in the case of secularized religious, nor is he dispensed from the obligations peculiar to profession in his religion, e.g., fasts, the recitation of an office peculiar to the religion, etc.; 2) the obligations of the vows and constitutions, however, are relaxed to the extent that in the judgment of the religious their observance is inconsistent with life in the world; hence, the vow of chastity remains intact, the religious is subject to the local Ordinary in virtue of his vow of obedience instead of to his religious superiors, and the vow of poverty does not forbid him the free *administration* of any goods which he has or may acquire; 3) he is forbidden to wear the religious habit, but if he is a cleric, he must wear the garb of the secular clergy; however, the local Ordinary may permit the religious the retention of the habit for good reasons if he himself granted exclaustration (Code Comm., Nov. 12, 1922; *Acta* XIV, 662; 4) the religious lacks both active and passive voice in his religion, but continues to enjoy its purely spiritual favors, e. g., indulgences (c. 639).

Exclaustration is never granted in perpetuity, hut only for a time, c. g., one, two, three years, etc., or while the cause lasts, e. g., as long as the parents need support, until the religious who contemplates secularization has found a benevolent bishop, etc. When the time expires for which exclaustration was granted, the religious must return to his religion, otherwise he will be considered a fugitive or apostate from the religion. Upon his return he repeats neither the novitiate nor profession.

Secularization— While exclaustration is a temporary and partial relaxation of the vows, secularization is a perpetual and total dispensation of the vows.

Like exclaustration, the induit of secularization can be granted only by the Holy See in religions of papal law; by the local Ordinary also in religions of diocesan law (c. 638).

The effects of secularization arc: I) the religious is dispensed wholly from his vows, whether these are temporarj' or perpetual, simple υτ solemn; 2) he is dispensed from all other obligations peculiar to his profession, e. g., the divine office in the case of the solemnly professed, fasts, and other works of penance imposed by the constitutions, etc.; 3) he must set aside the religious habit; 4) if he is a cleric in major orders, the obligations attaching to those orders remain, namely, celibacy and the divine office; but in the celebration of Mass, in the recitation of the canonical hours, and the administration and reception of the sacraments he conforms to the life of the seculiar clergy, e. g., if his religion followed peculiar rites and ceremonies or had its own calendar, these arc relinquished (c. 640,81).

If a secularized religious desires to return to his religion, hr must repeat his novitiate and profession, and he takes his place amontr the professed reckoning from the day of his new profession (c. 640, 52).

A religious who has asked for an induit of secularization may refuse to accept it later, even though the general has already issued a decree executing the rescript of the Holy See. This is a departure from the rule of c. 38 which states that rescripts requiring execution go into effect the moment they are executed. In our case the re-script goes into effect only from the moment it is accepted by the petitioner. But if the superiors have grave reasons for urging the acceptance of the rescript on the part of the petitioner, they should refer the matter to the Holy Sec (S. C. Rcl., Aug. 1, 1922; *Acta* XIV, 501).

Religious who secularize after receiving major orders must, *if* they have taken only temporary vows (e. g., they may have joined the religion as clerics in major orders) return to their proper diocese and must be received by their proper Ordinary. The reason is that by temporary profession they do not lose the diocese which they had in the world (c. 641, §1).

If they have taken *perpetual* vows, and have lost the diocese which they had in the world, they may not exercise the sacred ministry until they find a benevolent bishop who is willing to take them into his diocese at least by way of trial, unless the Holy See rules otherwise when granting the induit of secularization. In prac-tise a religious who contemplates secularization, and is in major orders, and has lost his proper diocese through profession, may seek permission of the Holy See to absent himself from the religious house for over six months in quest of a benevolent bishop. During this time he remains subject to his religious superiors. Having found

a benevolent bishop, he is incardinated either absolutely and outright, or by way of trial. If the bishop is willing to incardinate the religious at once, he grants him testimonial letters to this effect; which letters together with his petition for secularization the religious forwards to the S. C. Rel. either directly or preferably through his superiors. If the bishop, as usually happens, is willing only to receive the religious by way of trial, he grants him testimonial letters to this effect and these letters together with his petition for secularization the religious forwards to the S. C. Rel. preferably through his superiors. If the Holy See is satisfied with the reasons for secularization stated in the petition, it will issue a document granting exclaustration absolutely and secularization conditionally, and this document is sent to the benevolent bishop who executes it insofar as it permits exclaustration. The trial or experiment may last for three years. At the end of this time, or even before, the bishop may incardinate the religious by a formal written statement to that effect, and secularization is effected from this moment. Or the bishop may prolong the trial, but not longer than three more years. At the end of the six years if the religious has not been dismissed from the diocese, the law considers him *ipso facto* incardinated, and the religious is dispensed from his vows automatically (c. 641, §2).

If the religious is rejected by the bishop before the lapse of six years, since he is merely exclaustratcd and not secularized, he must return at once to his religion, or apply for an extension of the exclaustration to search for another benevolent bishop, unless this was already provided for in the first rescript of the Holy See.

A religious secularized with *perpetual* vows, is forbidden, without another special induit from the Holy Sec: I) to hold any benefice in major and minor basilicas, or in cathedral churches; 2) to teach or hold any position in major and minor seminaries, and in universities or other educational institutions which confer academic degrees by Apostolic privilege; 3) to hold any office in the episcopal Curia, including the office of diocesan consultor (Code Comm., Jan. 29, 1931; ./</« XXIII, 110); 4) to hold any office in religious houses of men or women, e. g., as confessor, chaplain, spiritual director, etc. These prohibitions do not extend to religious secularized while under temporary vows, unless they had been under such vows for at least six years. But they apply to all religious secularized before the Code (Code Comm., Nov. 24, 1920; */Icta* XII, 575). The foregoing prohibitions arc intended partly to discourage departure from religious life in the hope of securing honors, partly to safeguard religious communities against the adverse influence which an ex-religious in the above positions could exercise to

the prejudice of his former religion, or to the prejudice of religious life in general (c. 642).

An ex-religious cannot ask compensation for his work performed while in the religion. The reason is that renunciation of such compensation was made impliedly at the time of profession, the religious on the one hand promised to give his services, the religion on the other hand promised him temporal maintenance in return (c. 643,

But the religion must provide a charitable subsidy to a secularized religious woman in the event that she brought no dowry with her. The same is true if she brought a dowry but this does not amount to what a charitable subsidy would otherwise come to (S. C. Rel. Mar. 2, 1924; *Acta* XVI, 165). The amount of the subsidy is determined by the mutual consent of the religious and the superiors. In case of disagreement, the local Ordinary decides. The subsidy must suffice to see the woman home in safety and reasonable comfort, and to provide her with a decent living for a time taking into consideration the principles of natural equity, e.g., whether she can be taken care of by her parents, whether she is qualified physically and professionally to secure a gainful position in the immediate future, etc. (c. 643, §2).

§2. Unlawful Departure

A religious who departs unlawfully is considered either an apostate or a fugitive.

An *apostate* from religion is a religious with *perpetual* vows who leaves the religious house without permission and with the intention of not returning, or who leaves the religious house with permission but docs not return because he intends to withdraw himself from religious obedience. A religious with *temporary vows* who thus deserts is not classified in the Code as an apostate, hence he is a fugitive at the most. The intention of not returning may be evident from words, acts or other circumstances. If the intention is not clear, it is presumed that the religious intends to desert if he does not return within a month either to his original house or to some other house of his religion (c. 644, §1, 2).

A *fugitive* from religion is a religious who leaves the religious house without permission, but *has the intention to return* (c. 644, £3). Not every egress is flight *(fuga),* but if the constitutions say nothing about the matter, and since the Code is likewise silent on this point, we may follow the more favorable opinion which allows the religious an absence of three days before being considered a

fugitive. .An absence of less than three days could be punished in such a case, but not with the penalties enacted against fugitives.

The penalties enacted against unlawful departure from religion are more severe in the case of apostates than in the case of fugitives (cfr. p. 714). An apostate from the religious organization is not *ipso facto* dismissed by the law, but apostacy may he the cause for dismissal by the superiors after two warnings have been issued to the apostate (cfr. next article).

Neither the apostate nor the fugitive is freed of the obligations of his vows or constitutions. Hence, both must return to the religion without delay. The superiors shall seek after them with solicitude, and receive them if they return repentant, and willing to accept a penance to repair scandal. The obligation to seek an apostate or fugitive nun is committed to the local Ordinary, and to the regular prelate if the nuns are subject to the latter. The reason is that the superioress being bound to papal enclosure cannot personally go in search of the nun (c. 645).

ART. II

Compulsory Departure

§1. *Ipso Facto* Dismissal

The following are considered dismissed by the very fact that they commit the crimes specified:

1) Religious who publicly apostatize from the Catholic faith;

2) A religious who runs away with a person of the opposite sex even though they do not marry;

3) Religious who contract a, valid, or attempt an invalid marriage, though it be only a so-called civil marriage (c. 646, §1, η. 1, 2, 3).

In the above cases it suffices that the major superior with his chapter or council, as the constitutions may specify, issue a declaration of the fact. However, the religious is to be considered dismissed even before this declaration of the fact (Code Comm., July 30, 1934; *Acta* XXVI, 494). The superior shall take care to preserve in the archives of the house the evidence which he has collected (c. 646, §2).

When religious are dismissed outside of the above cases this happens by some decree or sentence of the superiors, not by a mere declaration of fact, as we shall explain presently.

§2. Dismissal by the Superiors

We shall discuss: 1) the dismissal of a religious at the expiration of temporary vows; 2) dismissal of a religious during temporary vows; 3) dismissal of a religious with perpetual vows; 4) dismissal of a religious in urgent cases.

A. Dismissal at the Expiration of Vows

At the expiration of his temporary vows a religious is free to quit the religion. Likewise the religion has the right to deny him permission to renew profession (c. 637). This, however, is dismissal only in a broad and imperfect sense, because one cannot be dismissed who is no longer a member of the society, and such arc religious when their temporary vows expire.

But the superiors must have a just and reasonable cause for denying the religious the right to renew profession. These may be purely administrative reasons without fault on the part of the religious, or they may be based on censurable conduct. In general, the reasons justifying refusal to renew profession are the same as those which warrant dismissal during the time of temporary vows (cfr. *infra.).*

A religious cannot, however, be denied the right to renew profession because of infirmity, unless it can be proved for certain that the infirmity was present before he made first profession and has been concealed through fraud (c. 637). If a religious during the period of temporary profession should become insane, he cannot be sent home at the expiration of his vows, but his juridical status then remains the same as before he became insane, and the religion continues to have the same obligations toward him (S. C. Rel., Feb. 5, 1925; *Acta* XVII, 107).

One who is debarred from renewing profession cannot have recourse to the Holy Sec *in suspensive,* but he must leave the religion at once. Recourse *in devolutive* may be taken in theory, but in practise it ill behooves one to force himself into a society where he is not wanted.

B. Dismissal During Temporary Vows

The superior competent to dismiss a religious under temporary vows whether in an Order or a Congregation, is: 1) the supreme moderator in a religion of papal law of men or women, or the abbot of an independent monastery, but both must have the consent of their council expressed by secret ballot; 2) the local Ordinary in the case of *nuns* under temporary vows, or also the regular prelate if the nuns are subject to him ; these judge the justice of the cause

for dismissal and issue or withhold the decree of dismissal after the superioress with her council submits in writing the reasons for dismissal; 3) in Congregations of diocesan law the local Ordinary of the territory where the house is situated of which the religious in question is a member, but he may not dismiss the religious without the knowledge, or against the just dissent, of the superior general (c. 647, §1).

The above superiors have a grave duty in conscience not to dismiss the religious save where the following circumstances arc verified :

1) The cause for dismissal must be grave since there is question here of a grave matter. But they need not be of a criminal nature. Thus, lack of the necessary qualifications to make one a useful member of the society would suffice for dismissal, e.g.. lack of talent in a clerical religion. It must be remembered that a religious under temporary vows is still under probation. But ill-health is no cause for dismissal, unless this had been fraudulently concealed by the novice. Causes imputable to the religious himself and of a censurable nature must be judged by the superiors. The Code gives one illustration: a lack of the religious spirit as manifested by repeated infractions of the rule, the constitutions and the precepts of the superior. Another such cause would be failure to apply oneself to studies in a clerical religion (c. 647, §2, n. 1,2).

2) The causes need not be established by way of a formal trial. They may be established extrajudicially, summarily and administratively by informal investigation, or observation. But the reasons must be reduced to writing, and proofs must be at hand in the event that the dismissed has recourse to the Holy Sec (c. 647, §2, n. 3).

3) The reasons for dismissal must be explained to the religious so that if he wishes he may have recourse to Rome. He may take such recourse in virtue of common law, and pending the recourse the dismissal produces no effect, and the religious is bound by his vows and must remain in the religious house until an answer comes from the Holy Sec. Ten days are permitted to have recourse from the day notice of dismissal is received, and the religious is aware of his right to take recourse. Hence, the superior should inform the religious of this his right. The religious may take recourse to the S. C. Rel. either directly or through his superiors. In the former case there must be proof that he took recourse, and the testimony of two witnesses, or that of an authentic document suffices to show proof (c. 674, §2, n. 4; also S. C. Rel., July 20, 1923; *Acta* XV, 457).

4) If a religious woman is dismissed, the provisions concerning the charitable subsidy apply in her case also (c. 647, §2, n. 5).

The above rules governing the dismissal of religious under temporary vows apply also to the dismissal of those who take vows for an indefinite period under the formula: *As long as I live in the Congregation* (Code Comm., Mar. 1, 1921; *Acta* XIII, 177).

Concerning the status of religious who are dismissed during the time of temporary vows, cfr. *infra* p. 390.

C. Dismissal of Religious With Perpetual Vows

While a religious with only temporary vows may be dismissed for purely administrative reasons, namely for the good of the society short of any moral fault on the part *of* the religious himself, yet after he has been admitted definitely to the religion through perpetual vows, his period of probation as respects his fitness is ended, and the religious with perpetual vows cannot be dismissed except for misconduct amounting to incorrigibility.

Two questions must be answered here: 1) what arc the pre-requisites before proceeding to the dismissal of religious with perpetual vows; 2) how is the actual dismissal to be conducted?

(1) *Pre-requisites for Dismissal*

Here we again distinguish between religions of men and religions of women.

In religions of men—In religions of men, whether clerical or lay religions, exempt or non-exempt, of papal or diocesan law, a perpetually professed religious must have committed at least three offenses, and must have received at least two warnings, and must have failed to amend, before he can be pronounced incorrigible and be dismissed (c. 649).

We said that the crimes must be three in number. Yet one crime suffices if by reason of the two-fold warning it becomes triple, e.g., continued apostacy from the religion (c. 657).

By a crime or offense *(delictum)* the Code understands any violation of common or particular law (e.g., of the constitutions), to which a penalty has been attached by the lawgiver; likewise any violation of the superior's precept to which the superior has attached a penalty to be incurred either *ipso'jure,* or *ferendae sententiae*

The crimes must be grave objectively, and subjectively, i.e., in the sense that the delinquent can offer no valid exonerating excuse, e.g., ignorance, grave fear and force, necessity, etc. (c. 2205, 2206,

2223). Likewise from the very nature of a *delictum* the transgressions must be external and notorious.

The crimes must be of the same species, or if they arc of different kinds, they should be of such nature that when taken together they betray a perverse will bent on sin (c. 657).

At least two warnings must precede the dismissal, one after each of the first two offenses (c. 660). The warnings are not valid unless the offenses are notorious, or have been admitted by the delinquent extrajudicially, or have been established by extrajudicial proof sufficient to establish a fact even in court, e.g., the testimony of two trustworthy witnesses, an authentic document, etc., (c. 656, n. 1; 658, §1). Where the offense is continuous in nature, it is necessary that at least three days shall lapse between the one and the other warning (c. 660). The warnings must be issued by the immediate major superior or by his delegate. One delegation may be given to issue both warnings (c. 659). To each warning the superior shall add the threat of dismissal (c.661, §3). Moreover he shall add timely exhortations and corrections, nor shall he fail to recur to penances and other remedial penalties (c. 661, §1). In fact the superior must remove the delinquent from the occasion of sin by transferring him, if necessary, to another house of the same religion where surveillance can be exercised more effectively, and the occasion of sin will be more remote (c. 661, §2).

The religious cannot be dismissed until he shows failure to amend. He is considered as having failed to amend if after the second warning he commits a new offense, or continues in his former crime. But after the second warning the superior must wait at least six days before taking further action (c. 662).

It should be noted that between one crime and another there must be at least a moral union. How great an interval between one crime and another destroys this union, the Code does not define. Schafer, *De Religiosis,* n. 591 believes that a three-year interval will cause a new offense to be considered the first one. But he adds that *if* the delinquent gives extraordinary signs of atonement, one year will suffice to break the nexus between one crime and the other.

Pre-requisites in religions of women—Before proceeding to the dismissal of a woman with perpetual vows there must be incorrigibility as in the case of religious men. But here the incorrigibility need not he manifested by crimes *(delicta)* in the strict sense as above defined. It suffices that there be grave external reasons to justify dismissal, e.g., in the case of a sister who is given to excessive

talkativeness whereby the faults of others are revealed to outsiders, and the spirit of charity within is gravely endangered ; in the case of a sister who continually conspires against the superiors and becomes a source of rebellion in the community, etc. Nor is it absolutely necessary that two warnings be given, surveillance maintained, the sister removed to another house, etc., although in practise the Holy See insists on the two warnings. The dismissed is entitled to the charitable subsidy referred to above (c. 651; cfr. Woywod, *o.c.* under this canon).

(2) *Dismissal Proceedings*

Once the pre-requisites for dismissal arc verified, the superiors may proceed to the act of dismissal. Here we must distinguish between exempt clerical religions, and all other religions.

In religions other than clerical exenipt religions— In each case the supreme moderator with the majority vote of his council decides whether there is a case for dismissal (c. 650, §1). Thereafter:

1) In religions of *diocesan* law, whether of men or of women the whole case is submitted to the local Ordinary of the diocese in which the religious house of the delinquent is situated. The local Ordinary's duty is to weigh the reasons for dismissal and to issue the decree of dismissal. The reasons for the dimissal must be explained to the dismissed and he has a right of recourse to the Holy See *in suspensivo* as explained above (c. 650, §2, η. 1, §3). Should he prefer to waive this right the local Ordinary's decree of dismissal need not be confirmed by the Holy Sec.

2) In religions of *papal* law the Code distinguishes again between religions of men and religions of women. In religions of *men* the supreme moderator issues the decree of dismissal which docs not take effect until confirmed by the Holy See, and together with the decree must be submitted the defense *of* the religious, or his signed statement that he waives his right to object (c. 650, §2, n. 2, §3). In religions of *women* the mother general without issuing the decree of dismissal refers the whole case to the S. C. of Religious (c. 652, §3). But if a nun is being dismissed, all documents and acts of the case are sent to the Holy Sec by the local Ordinary together with his opinion of the case and that of the regular prelate if the nuns are subject to the latter, (c. 652, §2).

In clerical exempt religions— Here a formal trial in accordance with Part I of Book IV of the Code must be instituted to dismiss a religious with perpetual vows (c. 654).

The trial cannot be begun before it is established extrajudicially that the crimes have been committed, that the warnings have been given, and the delinquent has failed to amend. The trial itself establishes these facts again judicially (c. 656).

The immediate major superior (the provincial or abbot) sends all documents and acts pertaining to the extrajudicial investigation to the supreme moderator (the general superior or the abbot president). The supreme moderator hands them over to the promoter of justice who is a priest of his religion (c. 663).

The duty of the promoter of justice who is the prosecuting attorney in canon law, and who in the present case must be a member of the religion, is to secure social justice by using every just means to bring about the conviction of the accused. lie must first of all examine the acts and allegations and documents, and having studied the case draw his conclusions as to whether in his opinion there is a case for dismissal. If he decides there is a case, he states this in writing by drawing up a formal accusation and presenting it to the collegiate tribunal (c. 664, §1).

The tribunal consists of the supreme moderator as presiding judge and his council which must comprise at least four other religious. The trial is conducted in accordance with Part I of Book IV. 'rhe accused has the right to choose a priest of the religion to defend his case, and if he docs not exercise this right, the presiding judge will appoint a lawyer for him. If not present in person, the accused will be represented bv a proxy who mav also be his lawver (c. 1655, §1 : 165S, 84).

The trial must show beyond every reasonable doubt: 1) that the offenses were committed; 2) that the warnings were given; 3) that the accused has failed to amend (c. 664, §2). The sentence of the tribunal docs not take effect until it is confirmed by the S. C. of Religious, and to that end all documents and acts of the trial must be submitted to the Congregation as soon as possible (c. 666).

For distant countries the supreme moderator with the consent of his council can delegate even habitually the power of dismissal to prudent religious of tried virtue who must be at least three in number. The delegated tribunal must also appoint a promoter of justice and conduct the trial as above outlined in all details. The documents and acts of the trial, once sentence of dismissal has been passed, must be sent at once to the S. C. Rel. preferably through the procurator general (c. 667).

(3) *Dismissal in Urgent Cases*

In the case of grave external scandal, or in the case of very grave

and imminent danger to the community, the offending religious may be dismissed at once, e. g., where the religious has committed an enormous offense for which he will be prosecuted in the civil court. We are not now speaking of public apostacy from the Catholic faith, nor of escape with a person of the opposite sex, nor of marriage, which crimes are punished by the law itself with immediate dismissal, as we have seen.

In the urgent cases to which we now refer the superior competent to dismiss is: 1) the immediate major superior with the consent of his council; 2) the local superior if time does not permit of recourse to the major superior, but the local superior also needs the consent of his council, and, in addition, the consent of the local Ordinary save in clerical exempt religions (c. 653, 66S).

Lest the religious suffer injustice through hasty dismissal, the Code provides that the major superior shall at once submit the case to the Holy See for examination. But in clerical exempt religions the canonical trial is begun at once (c. 653, 668).

The religious who is dismissed in urgent cases has no recourse to the Holy Sec save *in devolutivo*. In the meantime he must put aside the religious habit and leave the religious house (c. 653, 668).

§3. Status of a Dismissed Religious

Religious with temporary vows— Dismissal of a religious under temporary vows frees him of his vows, and he is likewise dispensed from all other obligations inherent in his profession and proper to his religion, e.g., certain fasts (c. 648).

If he was in minor orders, he is *ipso facto* reduced to the lay state. If he was in major orders he retains the obligations attaching to major orders, namely celibacy and the divine office, and he must return to his diocese (c. 648).

Religious with perpetual vows— A religious who is dismissed while under perpetual vows remains bound to his vows and the obligations of his rule and constitutions, unless the constitutions or an Apostolic induit decree otherwise (c. 669, §1). Thus, the Holy See often dispenses lay religious, and religious clerics in minor orders from their vows at the time of confirming the decree of dismissal. Religious clerics in major orders may request secularization. As long as his vows remain, however, a religious who has been dismissed under perpetual vows is bound to return to his religion. And if he shows signs of sincere amendment for the space of three years (usually in a house of penance outside of his religion), the

religion is bound to take him back (c. 672). But, as we said, such religious in practise are often dispensed from their vows.

A religious cleric in major orders who has been dismissed under perpetual vows, and who has not received an induit of secularization and found a benevolent bishop, will remain in the diocese and under the jurisdiction of a bishop designated by the Holy Sec in the confirmation of the decree of dismissal. He may seek to return to his religion eventually, or he may prefer to secularize in time. At any rate, for the present he remains suspended until he proves himself worthy of either being readmitted to the religion, or incardinated into a diocese. After a year of good conduct the bishop may ask the Holy Sec to lift his suspension. Until such time the religion is bound to support him. The religious while in the diocese on penance assumes the garb of the secular clergy, and this he continues to do until he returns to his religion, unless he succeeds in finding a benevolent bishop to incardinate him (c. 671).

A religious in major orders who is *ipso facto* dismissed because of a crime enumerated on p. 383 need never be taken back by his religion (Code Comm., July 30, 1934; *Acta* XXVI, 494). Such clerics arc indefinitely laicized (c. 670). However, if repentant, they may be reinstated and permitted to exercise the sacred ministry after a number of years.

Chapter VIII

SOCIETIES OF MEN OR WOMEN WHO LIVE A COMMON LIFE IN THE MANNER OF RELIGIOUS BUT WITHOUT VOWS

General notions— Societies of men or women living a common life from spiritual motives but without vows arc found as early as the 12th century in the Netherlands. They were the Beguines (women) and the Bcghards (men) (cfr. *Catlt. Ency.* under these captions).

Later, secular tcrtiarics began common life, at first without vows, then taking vows which, however, were not recognized by the Church at first, and so were not public or (in those days) solemn vows.

The so-called Reformation of the 16th century caused practically all the Societies in question to disappear. However, new Societies replaced them in the following centuries, e.g., the Oratorians, who were founded in the 17th century. Especially in the 19th century did Institutes without vows increase in great numbers, due mainly to the social and political upheavals wrought throughout Europe by the French Revolution.

Societies of men or women who live a life in common without vows differ essentially from religions. Their members do not take public vows (c. 673, §1). We say *public* vows, i.e., vows accepted in the name of the Church, and recognized as vows with juridical binding force in the external forum by the ecclesiastical authorities. Some Societies indeed have vows, but these are of a private nature, and have only an ethical import; and of these some take only one or the other of the three usual vows, while others take all three vows *of* poverty, chastity and obedience, e.g., the Missionaries of St. Vincent de Paul. In some Societies we find no vows, not even private ones, e.g., with the Oratorians. In other Institutes we find an *oath* of obedience as with the White Fathers *of* the African Missions; in others we find a promise of stability, a promise to observe common life, or as with the Pious Society of the Missions the *promise* to observe poverty, chastity and obedience.

The Societies under consideration differ likewise from sodalities, confraternities, III Orders secular, and similar pious associations in the Church, and this in four respects: 1) the former lead a life in common; 2) they are governed by superiors with at least dominative authority; 3) they have approved constitutions; 4) they imitate the religious life in striving after evangelical perfection.

These Societies may be clerical or lay, of papal or diocesan law (c. 673, §2). Examples of clerical Societies arc the Oratorians, the Salcsians, the Lazarists, the Sulpicians, etc. To the lay Societies belong the Filippini Sisters. Some Societies even enjoy exemption as do regulars c. g., the Pallottine Fathers (Pious Society of the Missions).

Laws Governing the Societies

The main source of legislation are the constitutions of the Society. These may often contradict the laws of the Code intended for religious, but if the constitutions have been brought up to date in accordance with the decree of the S. C. Rel., June 26, 1918 (*Acta* X, 290), the constitutions prevail over the Code. In most points, however, it will be found that the constitutions simply restate the canons of the Code which refer to religious.

Where the constitutions are silent the Code governs on the following points, and insofar as the canons arc applicable in view of the nature of these Societies in general and the scope of this or that Society in particular:

1) Canons 492-498 apply as to the erection and suppression of the Society, its provinces and houses (c. 674);

2) Canons 499-530 apply concerning the internal government of the Society, namely, as to the authority of the superiors, their election and appointment, their rights and duties, and as concerns confessors and chaplains (c. 675). Particularly does c. 505 apply as concerns the temporary tenure of the local superiors, even though the houses do not belong to the Society, e.g., in the case of a superior of a seminary, hospital, school, etc. (Code Comm., July 25, 1926; *Acta* XVIII, 393).

3) These Societies have the right to acquire and possess temporal goods. And in the administration of the goods of the Society, or its provinces and houses c. 532-537 apply. And whatever is given to a member as a member of the Society belongs to the Society. But whatever other goods come to the members, e.g., by way of gift, inheritance, etc., the members acquire, retain, administer and alienate in their own name, unless the constitutions rule otherwise (c. 676).

4) Canon 542 which determines the requisites for valid and licit admission to a religion applies equally to the admission of candidates to a Society. But the remaining pre-requisites, e. g., the testimonial letters, the novitiate, etc., as determined by the Code for religions, do not apply to these Societies unless the constitutions so specify (c. 677).

5) The canons of the Code which govern the studies in secular seminaries, or the studies for aspirants to the secular priesthood, and those which refer to the ordination of the same candidates apply to clerical Societies leading a common life without vows. Hence the members of these Societies retain their proper dioceses and local Ordinary. And it is from the latter that they receive dimissorials for ordination, unless the Society has a special induit from the Holy Sec permitting the superiors to grant dimissorial letters to their subjects. In the latter case it would seem that the member loses his proper diocese which he had in the world, and his proper local Ordinary upon definite reception into the Society, so that in the event of his quitting the Society, or being dismissed, he must, if in major orders, search for a benevolent bishop (c. 678).

6) Concerning incardination and excardination the members of Societies arc governed by the same canons which determine incardination and excardination for secular clerics. Hence, an ex-member of a Society cannot, like an ex-religious, consider himself incardinated in a diocese in accordance with c. 641, §2 by the mere fact that he has exercised the sacred ministry in a diocese for the space of six years without being expelled (S. C. Cone. *Sedunen.,* July 15, 1933 ; *Acta* XXVI, 234).

7) The members of these Societies are held to the common obligations of clerics insofar as this is possible or logical. Thej- are likewise held to the particular obligations of religious as described in c. 595-612, namely, as concerns common exercises of devotion, the habit, episcopal enclosure, the law of residence, sacred ministry in the diocese, the divine office and epistolary correspondence (cfr. c. 679). The superiors are held to make the profession of faith before assuming office, no less than the superiors in religions arc so held bv c. 1406, §1, n. 9 (Code Comm., July 25, 1926; *Acta* XVIII, 393).

8) The members of these Societies enjoy the common privileges of clerics. But they do not enjoy the privileges of religious, e.g., exemption and the privilege of begging, unless they have these by special induit of the Holy See. (c. 680).

9) Canons 632-635 apply also to the transfer of a member of a Society to another Society, or to a religion. Canons 646-648

apply to the dismissal of a member who is bound to the Society by a tie temporary in nature, whereas if these ties are perpetual in nature the member is dismissed in accordance with c. 646, and c. 649 *sq.* (cfr. c. 681; also Code Comm., Mar. 1, 1921; *Acta* XIII, 177). Those who leave the Society unlawfully ought to be sought after solicitously by the superiors in accordance with c. 645. They arc not apostates, but fugitives, and they incur the penalties of the Code for fugitives as do religious (cfr. c. 681). Where there is no bond holding them to perseverance, or where this bond has ceased of itself, the member may freely leave of his own accord.

10) Penalties established by the Code against delinquent religious apply to members of Societies in these cases: 1) the penalties found in c. 2386, against fugitives apply; 2) the penalties against fraud perpetrated by an aspirant to a religion in virtue of which his profession was invalid, applies as contained in c. 2387; 3) those who violate common life incur the penalties of c. 2389; 4) superiors who send their subjects to a strange bishop for ordination without an excuse acknowledged by law incur the penalties of c. 2410, supposing the superiors of the Society have by special induit the right to issue dimissorial letters; 5) superiors who transfer their subjects to another house at the time of canonical visitation and from fraudulent motives incur the penalties of c. 2413 (Code Comm., June 3, 1918; *Acta* X, 347).

Part ÎJkree

ON THE LAITY

Having considered the law on clerics and religious, we turn to Part III of Book II of the Code which treats of the laity.

It may be noted that the Code in this part contains only 50 canons. This is not meant as a slight to the laity, as if they figured little in the life of the Church. It is true that the laity share little in the government of the Church, for the Saviour bestowed ruling power on the few, not on the many.

But there are rights other than political or governing rights. A citizen of the State may possess few or no rights as a public office holder. But his private rights as a citizen can be most numerous.

So, too, in the Church. While the laity exercise no ruling authority and hold no public offices, yet they enjoy countless spiritual rights from membership in the spiritual society received through baptism. And if the Code at this place chooses not to list all such spiritual rights, it is obviously to avoid needless repetition. For it may be said that whatever duties are incumbent upon pastors of souls represent so many rights on the part *of* the laity: the duty, e.g., to administer the sacraments, to conduct public worship, to preach the word of God, to visit the sick, to care for the needy and the afflicted under their charge, to observe the law of residence, etc.

Hence, the Code in its 50 canons on the laity calls our attention merely to the rights of Catholic laymen considered as groups or corporations. It permits the laity to organize themselves into moral persons for purely spiritual favors. And so, we shall speak: 1) of the associations of the faithful in general; 2) of the associations of the faithful in particular.

Chapter I

ASSOCIATIONS OF THE FAITHFUL IN GENERAL

Praiseworthiness and purpose of associations— The faithful are worthy of praise if they join societies erected or at least commended by the Church; but they must beware of secret, condemned, seditious or suspected societies, as also of those societies which seek to withdraw themselves from the lawful vigilance of the Church (c. 684).

Associations distinct from religions and from societies of men or women who live a common life without vows can be established by the Church either to promote a more perfect Christian life among their members (III Orders secular), or for carrying on certain works of piety or charity (sodalities and pious unions), or finally for the purpose of promoting public worship (confraternities), cfr. c. 685.

Necessity of formal decree of erection— No association is recognized in the Church which has not been erected or at least approved by the lawful ecclesiastical authority.

Besides the Roman Pontiff, it belongs to the local Ordinary to erect or approve an association, saving those associations whose erection is reserved to others by Apostolic induit, e.g., to some religious Order.

Although the privilege spoken of in the preceding paragraph is proved, still, unless the privilege expressly provides otherwise, the written consent of the local Ordinary is required to validly erect the association. But where the local Ordinary has given his consent for the establishment of a religious house, this suffices also for the erection of an association in the same house, or in the church attached to the house, provided the association is not constituted by way of an organic unit (i.c., with president, assisting officers, counsellors, etc.), and provided the association is one which the religion exclusively establishes, e.g., the Holy Name Society with the Dominicans.

Neither the vicar-capitular, nor the vicar-general unless he has a special mandate from the bishop, may erect an association or consent to its erection or aggregation.

Letters permitting establishment of an association should be granted free of charge to those who by Apostolic induit are privileged to erect the association, saving a moderate fee to cover the necessary expense involved in expediting the rescript (c. 686).

Jn accordance with c. 100, associations of the faithful only then acquire juridical personality in the Church as a moral person when they obtain a formal decree of erection from the lawful ecclesiastical superior (c. 687).

Name and statutes of the association—An association should not assume a title or name which betrays levity or unbecoming novelty, or which promotes a devotion not approved by the Holy See (c. 688).

Even,· association must have its own statutes examined and approved by the Holy See or the local Ordinary. Statutes which are not approved by the Holy See always remain subject to the supervision and correction of the local Ordinary (c. 689).

Jurisdiction of the local Ordinary—Unless special privilege rules otherwise, all associations, even those erected by authority of the Holy See, are subject to the jurisdiction and vigilance of the local Ordinary, who has the right and duty to visit them in accordance with the rules of canon law. But those associations which have been erected by exempt religious in their own churches by Apostolic privilege the local Ordinary may not visit as far as concerns internal discipline and the spiritual guidance of the members (c. 690).

Property rights—A lawfully established association can hold and administer goods under authority *of* the local Ordinary, who also has the right to demand a financial report each year of the administration of the goods. The association need not give a financial account to the pastor (c. 691, §1). In the United States most parishes have their associations of the laity, and these societies are often canonically established, but their funds being usually so meagre, e.g., the income from their monthly dues, etc., it is not customary for them to report thereon to the local Ordinary. The same parish societies, e.g., the Holy Name Society, Altar Society, the Children of Mary, etc., generally assist the pastor in raising funds for the parish. Over these funds the pastor has full control, for the parishioners contribute to the bazaars, card parties, etc., with the view of helping their parish, not the societies who are merely the agents for the pastor.

No association may beg alms for itself without the consent of the local Ordinary, but with permission of the pastor a parish

society would not be forbidden to solicit subscriptions for the parish, not for the association, provided they confined themselves to parish limits (cfr. c. 691, §3). Catholic benevolent societies such as the Knights of Columbus, the Foresters, etc., and charitable agencies like the St. Vincent de Paul Society, not being chartered by the Church, need give no account of the finances to the pastor or bishop.

Rules of enrollment—To enjoy the rights, privileges, indulgences and other spiritual favors of the association it is necessary and suffices that a person be validly received into the society according to the statutes of the association, and that he be not expelled (c. 692).

Non-Catholics, members of condemned societies, notoriously censured persons, and public sinners cannot validly be received as members.

One and the same person can join several associations, but not several III Orders at the same time.

One who is absent cannot be enrolled in an association which has an organic constitution; nor can those who arc present be considered enrolled unless they knowingly and willingly consent to membership (c .693). Hence, the pastor, e.g., has no authority to declare all men of the parish members of the Holy Name Society.

A religious can join pious associations, saving those associations the observance of whose rules is incompatible with the observance of the religious rule and constitutions in the judgment of the superior. Canon 704 forbids a religious to join a III Order secular (c. 693).

Concerning the manner of receiving members, the common law must be followed in addition to the statutes of the association. The candidate's name should be entered upon the roster of the association, and if the association is an organic body, such inscription is required for validity of membership (c. 694).

No charges for enrollment may be made directly or indirectly saving what the statutes specify, or what the local Ordinary expressly permits in view of exceptional circumstances (c. 695).

Dismissal of members—Once a member has been lawfully enrolled, he cannot be dismissed from the association save for a just cause and in accordance with the statutes.

Should a member become a non-Catholic, or join a condemned society, or fall into notorious censure, his name must be stricken from the roster, but he must be first warned, and the statutes must be observed with reference to any other particulars, and the expelled member always has the right of recourse to the Ordinary.

Even though the statutes contain no explicit mention to that effect, the local Ordinary has the right to expel members from any

association, and the religious superior has this right with respect to associations erected by the religious in virtue of Apostolic privilege (c. 696).

Meetings and elections— Lawfully established associations have the right, in accordance with their statutes and common law, to hold meetings, to promulgate special by-laws, and to elect administrators of their temporalities. As to the manner of convoking electors and conducting an election, the common law as contained in c. 161-182 should be observed, in addition to the statutes of the association to the extent that they do not contravene the common law (c. 697).

Spiritual directors and chaplains— Unless an Apostolic privilege expressly rules otherwise, it belongs to the local Ordinary to appoint the spiritual director and chaplain for associations erected or approved by him or the Holy Sec, or for associations erected by religious outside of their own churches. But in associations erected by religious in their own churches (in virtue of Apostolic privilege) it suffices that the local Ordinary approve of the moderator and chaplain chosen by the superior from the secular clergy, and if the priest chosen is a member of the religion, not even the approval of the director or chaplain on the part of the local Ordinary is necessary.

'I'he spiritual moderator and the chaplain can, during their term of office, bless the habit, insignia, scapular, etc., of the association, and invest new members. But they may not preach to the members without approval of the local Ordinary (c. 1338, §2).

'I'he spiritual director and the chaplain can be removed from office for a just cause by the one who appointed them, and by his successor or superior.

One and the same priest can be both spiritual director and chaplain (c. 698).

Suppression of associations— For grave reasons, and safeguarding recourse to the Holy Sec, the local Ordinary may suppress not only those associations which he or his predecessors erected, but also those which religious erected in virtue of Apostolic privilege and even with the consent of the local Ordinary. But only the Holy See can suppress an association which it erected (c. 699).

Chapter II

ASSOCIATIONS OF THE FAITHFUL IN PARTICULAR

Kinds of Associations— There are three kinds of associations in the Church:

1) Third Orders Secular;
2) Confraternities;
3) Pious unions.

Precedence of Associations— Among the pious associations of the laity the order of precedence is the following:

1) Third Orders;
2) Archconfraternities;
3) Confraternities;
4) Primary pious unions;
5) Pious unions other than primary.

In a procession with the Blessed Sacrament the confraternity of the Blessed Sacrament precedes even archconfraternities.

The right of precedence is enjoyed only when the members of an association march as a body under their own cross and banner, and vested in their habit or the insignia of the association (c. 701).

As between pious associations of the same species, e.g., two Third Orders, two confraternities, etc., that association takes precedence which has enjoyed the undisputed right hitherto in the place, or which has been established the longest in the locality in the event that no association can claim right to peaceful possession of precedence. Among the members of one and the same association, the order of precedence is determined by the statutes (c. 106, n. 5).

ART. I

Third Orders Secular

Definition— Secular tertiaries are those who strive after Christian perfection in the world in a manner compatible with secular

life, in accordance with the rules approved for them by the Holy Sec, and in harmony with the spirit of some I Order, under the direction of its prelates. If a III Order secular happens to be divided into many associations, each lawfully constituted association is called a *sodality of terttaries* (c. 702).

Jurisdiction over III Orders— Safeguarding privileges granted to certain first Orders, no religion can found a III Order of its own. But supposing such privilege to exist, the superiors can receive individual members into the HI Order, but they cannot validly erect a sodality of tertiaries without the consent of the local Ordinary, as was said above. Nor can the superiors without special permission of the local Ordinary permit that the sodalities which they have established wear a peculiar unauthorized garb of their own in public processions (c. 703).

Admission to III Orders— One who has taken temporary or perpetual vows in a religion cannot validly belong to a third Order, evfen though he was a member thereof prior to taking vows. But if the professed returns to the world after his vows have ceased, his membership in the III Order revives (c. 704).

No sodality of tertiaries can, without an Apostolic induit, receive members who wish to remain members in another III Order. But a tertiary may for a just cause transfer from one III Order to another III Order, or from one to another sodality of the same III Order (c. 705).

Participation in public functions— Tertiaries may, but need not, take part in public processions, funerals and other ecclesiastical functions as a body. But if they arc present in a body, they must proceed under their own cross and insignia (c. 706).

ART. II

Confraternities and Other Pious Unions

Definitions— Those associations of the faithful which have been erected for the purpose of furthering works of piety or charity are called *pious unions.* If they have an organic constitution, they are called *sodalities.* Sodalities erected to promote public worship are called *confraternities* (c. 707).

Decree of erection or approbation— To be canonically erected a confraternity requires a formal decree of erection. A pious union may exist with the mere *approval of* the Ordinary, and although

such approval does not confer corporate personality, yet it enables the pious union to obtain spiritual favors, especially indulgences (c. 708).

Titles and names—The title or name of a confraternity or pious union should be taken from one or the other of the divine attributes, or from some mystery of the Christian religion, or a feast of our Lord, the Blessed Virgin or a saint, or from the nature of the society's work (c. 710).

Two or more confraternities or pious unions of the same name may not be permitted in the same place without special privilege, except in large cities, and provided the local Ordinary judges that they are sufficiently distant from one another (c. 711, §1).

Special rules concerning establishment—Local Ordinaries shall strive to introduce into every parish Confraternities of the Blessed Sacrament and of Christian Doctrine. When these have been lawfully erected, they become *ipso jure* aggregated to their archconfraternities in Rome (c. 711, §2). But local Ordinaries may introduce *pious unions* of the Blessed Sacrament instead of *confraternities,* but in that case the pious unions are not *ipso jure* aggregated to the Archconfraternity of the Blessed Sacrament in Rome (Code Comm. March 6, 1927; *Jeta* XIX, 161).

Confraternities and pious unions may not be erected save in a church, a public or semi-public oratory (c. 712, §1).

Habit and insignia—Members of a confraternity cannot take part in sacred functions unless they wear the habit or insignia of the confraternity (709, §1).

Without special permission of the local Ordinary confraternities which have been erected by religious in their own churches, arc forbidden to wear a garb or insignia of their own in public processions and other sacred functions (c. 713, §2).

A confraternity may not change or discard its habit or insignia without permission of the local Ordinary (c. 714).

Spiritual favors—Women can join a confraternity only to the extent of enjoying its indulgences and other spiritual favors (c. 709, §2).

Religious must communicate to their confraternities and pious unions all the spiritual favors which they have received from Rome, and which have been declared communicable by the Holy Sec; and these they should publish in the act of establishing the society (c. 713, §1).

Meetings and elections—It is the right of the local Ordinary to be present in person or through his delegate at the meetings of

confraternities, even those erected in the churches and chapels of regulars, and, without enjoying the right to cast a vote, to confirm the election of worthy and competent officers or to veto the election and even to remove unworthy officers from office; likewise to revise and approve the statutes and other by-laws of the confraternity, saving where these have received the approval of the Holy See (c. 715, §1).

The local Ordinary has the right to be timely advised of any special meeting of the confraternity; and if he is not so advised he may forbid that the meeting be held, and he may annul whatever was done at the meeting (c. 715, §2).

Exercises in common—Confraternities and pious unions may in their own churches (owned by themselves) conduct non-parochial functions independently of the pastor in whose parish the confraternity's church is situated, provided these functions do not conflict with the parochial functions in the parish church, the judgment of which is left to the local Ordinary. Likewise, confraternities and pious unions have the right to conduct non-parochial functions independently of the pastor but within the limits just described, even though their church (owned by themselves) is the parish church (c. 716). The situation here described is seldom verified in the U. S., but often enough in Europe.

If a confraternity or pious union has been erected in a church not its own, it may conduct functions only at its own altar or in its own chapel (within the church), and observing the limitations set down in the preceding paragraph (c. 717, §1). Even this situation is seldom verified in the U. S., i. c., where a confraternity or pious union owns its own chapel or altar within the church.

The goods of a confraternity or pious union should be kept separate from the temporalities of the church in the event that the church does not belong to the society; and they should be kept separate from the parish funds if the society owns the parish church (c. 717, §2).

Unless the local Ordinary prescribes otherwise, confraternities must take part in processions, and this they must do as a body, proceeding under their own cross and banner (c. 718).

Transfer of headquarters—By permission of the local Ordinary a confraternity or pious union may transfer its quarters to another church or chapel, unless the law or the particular statutes approved by the Holy Sec forbid such transfer. In addition, the consent of the religious superior is required for the transfer of a confraternity or pious union whose erection was reserved to the religion (c. 719).

ART. III

Archconfratemities and Primary Unions

Definitions— Those sodalities which have the right to aggregate to themselves other associations of the same type are called *archsodalities, archconfraternities, primary unions, primary congregations* or *primary societies* (c. 720).

An association may be given the mere honorary title of archsodality, archconfraternity, or primary union by the Holy See (c. 725). What remains to be said concerns only *real* archsodalities, archconfraternities, etc.

Right to aggregate— No association can validly aggregate to itself other associations without an Apostolic induit; nor may it aggregate associations of a different name and purpose than its own unless this is expressly provided for in the induit (c. 721).

Effects of aggregation— In virtue of aggregation all the indulgences, privileges and other spiritual favors which have been or will be granted directly to the aggregating association, and which are communicable, are communicated likewise to the association which has been aggregated. But in virtue of this communication the association which aggregates acquires no authority over the association which is aggregated (c. 722).

Formalities of aggregation— For the validity of aggregation the following conditions must be verified:

1) The aggregating association must itself have been canonically erected, and not aggregated to another archconfraternity or primary union;

2) The aggregation must have the written consent of the local Ordinary accompanied by his testimonial letters;

3) 'l'hc indulgences, privileges and other spiritual favors which arc communicated by aggregation should be enumerated, and this list must have been approved by the Ordinary of the place where the archconfraternity is situated, and it must be given to the association which has been aggregated;

4) The act of aggregation must be drawn up according to the formula prescribed in the statutes, and the aggregation must be in perpetuity;

5) The letters of aggregation shall be expedited free of charge, saving necessary expenses incidental to drafting the rescript, but beyond this no compensation can be asked, and no donation, even though freely proffered, may be accepted (c. 723).

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ON ECCLESIASTICAL THINGS

By the term ecclesiastical things *(res ecclesiasticae)* the Code wishes us to understand certain means necessary or useful to the Church's mission, i.e., the salvation of souls (cfr. c. 726). More specifically we arc to understand by this term: 1) the sacraments; 2) sacred places and seasons; 3) divine cult; 4) the teaching office of the Church; 5) ecclesiastical institutions; 6) temporal goods.

Much of the material contained in the Code at this place finds consideration in manuals of moral theology, liturgy and pastoral theology. Suffice it to remark that the Code is the original source book of that material.

After explaining in canons 727-730 the malice of simony, the Code passes on to legislate on the sacraments. As to the sacraments in general, it observes in c. 731 that these being sacred things call for reverential treatment, and takes this occasion to remark that the sacraments may not be administered to non-Catholics, even though the}· may be baptized, and even though they be in good faith, i.e., ignorant of the claims of the Catholic Church to be the only true Church of Christ; or though aware of such claims still remain unconvinced.

In c. 733 we are told that in the administration and reception of the sacraments the rites found in the approved liturgical books must be followed. Then c. 734-735 speak of the sacred oils employed in some of the sacraments: that new oils must be obtained each year; that within the year unconsecrated oil may be added to hold over the consecrated oil until the next Holy Thursday; and that the holy oils must be kept in the sacristy, not in private homes without episcopal permission.

Finally, c. 736 states that no payment can be asked for administering the sacraments, although it does not forbid accepting stipends freely offered or sanctioned by lawful custom.

Chapter I

BAPTISM

Solemn baptism and private baptism—Baptism is called solemn when its administration is accompanied by all the rites and ceremonies prescribed in the ritual; otherwise it is private baptism (c. 737, S2). When private baptism is conferred bjr any person other than a priest or deacon (and such a contingency is verifiable not only in danger of death, but also in missionary circumstances due to the prolonged absence of the priest), then only natural water is used together with the words: "I baptize thee, etc." If private baptism is conferred by a priest or deacon in danger of death (outside of danger of death a priest must baptize solemnly even if this must be done in private homes, saving the case of converts), then he uses baptismal water if this is available, otherwise holy water is preferable to unblessed water (cfr. Woywod, *o. c.,* n. 653); and the ceremonies prescribed by the ritual as subsequent to the act of baptizing should be added *if* time permits. If the subject recovers, the ceremonies preceding baptism must be supplied at a later opportune time in the church (c. 759, §1, 3). But in solemn baptism baptismal water blessed on Holy Saturday and the Vigil of Pentecost must always be employed (c. 757).

The rule is that baptism must be conferred solemnly, and in the rite of the parents; and if the parents belong to different rites, then in the rite of the father, but if the father is a non-Catholic, then in the rite of the mother (c. 755, §1 ; 756). Private baptism outside of danger of death may be permitted only in the case of adult converts who had been baptized in a non-Catholic sect, and arc now being rebaptized conditionally; but the permission to baptize privately must be obtained from the local Ordinary in such cases (c. 759, §2). If the convert is to be baptized absolutely, solemn baptism must be conferred, either according to the adult or the infant form.

The ritual contains two forms of solemn baptism, one to be employed in the baptism of infants as defined on p. 125, the other in the baptism of adults (all non-infants). But *converts* who arc to be baptized absolutely, because never yet baptized, and therefore

solemnly, can be baptized according to the infant formula if the local Ordinary permits this for a grave and reasonable cause (c. 755, §2). Concerning the procedure of receiving converts into the Church, cfr. p. 706.

Solemn baptism a pastoral function— The right to confer solemn baptism is reserved to the proper pastor of the subject, i. e., the pastor in whose parish the individual has a domicile or quasi-domicilc. Infants and minors follow the residence of the parents (cfr. c. 738; 93). But the pastor may not baptize even his own subjects outside of his territory without the permission of the pastor of the place, or of the local Ordinary. Nor can he in his own parish solemnly baptize non-subjects *(peregrini),* save the case where the latter cannot be baptized conveniently by their proper pastor, or without great delay. How long baptism may be postponed to protect the right of the proper pastor is not certain. Under ordinary circumstances it need not be delayed more than a week, it would seem. The pastor who solemnly baptizes a *peregrinus* in the circumstances just described needs not the permission of the proper pastor since he is acting on the permission granted by the common law; neither is he bound to turn over the stoic fees. But he is held to restitution if he baptizes a non-subject without necessity, or outside the case just described (c. 738-739).

Subject of baptism— Those cannot be baptized who are already baptized. As between infants and adults, namely between those who have and have not attained the use of reason we must distinguish.

Children of non-Catholics and of indifferent Catholic parents may always be licitly baptized in danger of death, even without the consent of the parents. Outside of danger of death it is unlawful to baptize such children, unless the parents, or at least one of them, or the responsible guardian, consents and assures the Catholic education of the child. Otherwise the sacrament would be exposed to irreverence because of the consequent danger that the person will not practise the faith. But if a Catholic relative offers a child of indifferent Catholic parents for baptism, it is left to the priest to judge in the case whether there is good hope of the Catholic education of the child (c. 750-751). Abandoned children should be baptized conditionally if nothing can be learned as to whether or not they have already been baptized (c. 749). Canons 746-748 contain a number of regulations concerning the baptism of an infant in the mother's womb, of an abortive fetus, and monstrous offspring; regulations which nurses, midwives, physicians, etc., rather than a priest, will find necessary to apply in practice. However, such persons

ought to be instructed on these points by the responsible priest, e.g., the hospital chaplain.

Adults may not be baptized unless: 1) they consent; 2) are sufficiently instructed in Christian doctrine; 3) repent of their sins (c. 752, §1). They must have the intention of joining the Catholic Church. The instructions may be reduced, and even omitted entirely, in danger of death if time does not suffice, provided the dying person consents to baptism and repents of his sins (c. 752, §2). if he belonged to a non-Catholic sect without being baptized, and there is danger that his good faith be disturbed by stressing the obligation of joining the Catholic Church, all mention of this point may be omitted (H. Oft'., Jan. 27, 1892, *Fontes,* IV, n. 1148). If he is destitute of his senses, but at some time during his life gave probable evidence of a desire for baptism, he should he baptized conditionally (c. 752, §3). If he is a total stranger to the priest, the latter may still baptize him conditionally since on the one hand there is solid probability of his not being baptized in view of the large number of unbaptized persons even in so-called Christian countries today, while on the other hand, his intention to receive baptism if not baptized, can be presumed by his having associated with Christians and having learned of baptism and of its need through them. In such cases he will be baptized under the formula: *Si capex es.* In fact, before *absolving* conditionally the person under consideration, it is always better, if possible, to first *baptize* him conditionally (cfr. Vermeersch-Creusen, o. *c.,* under this canon).

Sponsors— At every solemn baptism at least one sponsor must be had, and he need not be of the same sex as the person to be baptized (c. 762, §1 ; 764). It is permitted to have two, but not more than two sponsors, and then they should be of different sexes (764). A sponsor is required even though the ceremonies are merely supplied, private baptism having preceded (c. 762, §2). When baptism is administered conditionally, there is no need of a sponsor unless the sponsor at the first Catholic baptism can easily be had (c. 763, §1).

For *validity* of sponsorship the sponsor: 1) must be himself baptized; 2) must not have membership in any heretical or schismatical sect; 3) must not be under excommunication indicted by the ecclesiastical court or the competent superior; 4) must not be a parent or the spouse of the person who is being baptized; 5) must be designated by the *baptizandus,* his parents, guardians or in their absence by the minister of the sacrament; 6) must touch the person in the act of his being baptized, or must receive the infant from the minister, and this he may do physically or, being absent, by a proxy

of his choice, no special qualifications being required in the proxy by canon law as in the case of the principal, it sufficing that he have the use of reason and willingly accept the office (cfr. c. 765).

For the *licitnets of* sponsorship the sponsor: 1) must be at least 14 years old, unless the minister for a just cause admits a younger person; 2) must not be excommunicated by notoriety of fact; 3) must be acquainted with the elements of Christian doctrine; 4) must not be a novice or professed member of a religion, save with permission of the superior in urgent cases; 5) must not be a cleric in major orders unless his Ordinary consents to his acting as sponsor (c. 766).

Place of baptism— The proper place to administer solemn baptism is the baptistery of a church or public oratory (c. 773).

Local Ordinaries may permit solemn baptism in private homes in extraordinary circumstances (c. 776, 11, n. 2). In the rural sections of this country such exceptional circumstances are often present, namely great distance from the parish church with the consequent danger of exposing the life of an infant in bringing him to the church, not to mention the possible cost of getting him to the church. The local Ordinary may by general statute, then, describe the conditions under which solemn baptism may be administered in private homes in his diocese. And if such general statute exists, there is no need to apply for permission in each case. The lawgiver desires that as between the law prohibiting private baptism to infants outside of danger of death, and prohibiting solemn baptism save in a church or public oratory, preference be given the former law, to the disregard of the latter.

Solemn baptism may not be conferred in semi-public chapels, e. g., in the chapel of a hospital (c. 773). Nor may local Ordinaries permit this in virtue of c. 776, §1,n. 2 which authorizes them to permit solemn baptism in private homes. The two cases arc not parallel. An infant born in a hospital may be baptized privately in the hospital if he is in danger of death. If he is not in danger of death, baptism should be deferred until the child is taken home where he can be baptized by his proper pastor. If he will not be taken home in the near future, certainly a parish church must be nearby in whose territory the hospital is situated, and in that case the pastor of the parish in whose territory the hospital is located has the right to baptize the *peregrinus* solemnly in his church (cfr. p. 408). If we suppose the rare case that the hospital is far distant from any church, then only is solemn baptism justified in the chapel of the hospital, the hospital being his home in that case.

Registration of baptism— The pastor must carefully and without

delay enter into the baptismal register the name of the person baptized, the names of the parents and sponsors, and the date and the place of baptism (c. 777, §1). If private baptism was conferred by a person other than the proper pastor, the proper pastor must be notified of that fact, together with the data just described, so that he may supply the ceremonies and enter the name into his register (c. 778). Likewise the non-proper pastor who conferred solemn baptism should, besides notifying the proper pastor, record the baptism also in his own register with the remark that the person belonged to such or such a parish (cfr. S. C. Council, Jan. 31, 1927 in a private answer reported by Bouscarcn in his *Canon Law Digest,* IL 74).

In the case of an illegitimate child, the names of his parents must not be entered saving they consent, or if only one consents, his or her name should be entered ; or unless the fact of parentage is public. The consent must be expressed in writing or before two witnesses (c. 777, §2). The purpose of this law is principally to safeguard the priest from a possible future civil lawsuit for libel. Hence, if the child is legitimate in the eyes of civil law, even though illegitimate in the eyes of canon law, e. g., born of Catholic parents who are only civilly married, it would seem that the names of the parents could be entered without the above formalities, the danger of a civil lawsuit for libel being impossible in this case.

Chapter II

CONFIRMATION

Minister of confirmation—The ordinary minister of confirmation is a bishop. In his diocese a bishop may confirm both his own subjects and also non-subjccts. i.e., non-residents (c. 782, §1; 783, §1).

The extraordinary minister of confirmation is a priest who has received an Apostolic induit to confirm, or who by law has this privilege as in the case of priest-cardinals, abbots and prelates *nullius,* vicars and prefects Apostolic (c. 782, §3). In extensive missionary territories, as in many countries of South America, due to the difficulty on the part of the bishop to visit his entire diocese at frequent intervals, certain priests have been wont hitherto to administer confirmation by induit.

A decree of the S. C. Sacr. under date of Sept. 14, 1946 empowers certain priests the world over to administer confirmation as extraordinary ministers of the sacrament. The entire Latin text of the decree, together with an English translation and commentary can be found in the Eccl. Rev. of April, 1947. In substance we note here:

1) These priests only have the privilege: a) pastors, provided they have some territory; hence pastors of national parishes also, even though they share a territory jointly with other pastors; 2) administrators mentioned in c. 472; 3) religious pastors of c. 471; 4) priests in charge of souls within a given territory with full pastoral rights and duties, though they may not happen to be called pastors. None of the above priests can delegate the faculty to others, e. g., to assistants.

2) The above priests can validly and licitly confirm all Catholics within their territory, even non-subjects. But the person must be in danger of death caused by a serious illness. Ignoring cither of these two conditions invalidates the sacrament.

3) It is supposed no bishop can be called without serious inconvenience.

4) The ritual appended to the decree must be followed when confirming.

5) The confirmand should be in the state of grace, and if he has the use of reason ought to be instructed briefly concerning the nature of confirmation.

6) The confirmation must be recorded in the priest's confirmation and baptismal registers, and a notice sent to the local Ordinary. If he confirmed a non-subjcct the priest must also send notification thereof to the proper pastor; also to the pastor of baptism if the person was not baptized in his own parish.

The decree restates the law of the Code on confirmation from cc. 780-800. Then follows the Latin text of the ritual, i.e., the ceremony and prayers to be observed by the extraordinary minister when confirming.

Age for confirmation—If a child under seven years of age is in danger of death, he may be confirmed; otherwise confirmation should be deferred until about the seventh year of age, unless the minister of confirmation judges it expedient in some particular case to confirm a child outside of danger of death even before that age, e .g., if the minister foresees that the person will be deprived of the opportunity of receiving the sacrament for several years (cfr. c. 788).

The law forbidding the administration of confirmation before the age of discretion is based upon the expediency of refining the minds of youth and strengthening them in Christian doctrine after proper catechetical instruction. On June 30, 1932, the S. C. Sacr. stated in a declaration that since confirmation is the complement of baptism it is more in harmony with the nature of the sacrament that it be administered before First Communion (*Acta* XXIV, 271). It is obviously impossible to enforce this regulation in a country like ours since on the one hand children ought to approach the Holy Table as soon as they reach the age of discretion, while on the other hand the bishop cannot visit each parish annually to confirm the children as soon as they reach the age of discretion. With us the bishop usually visits the entire diocese within the space of five years, administering confirmation on these occasions, and thus in our country' children arc confirmed approximately between the ages of 7 and 12 years.

Sponsors for confirmation—The same qualifications as for valid and licit sponsorship in the case of baptism are required in the case of confirmation, save that in the latter case the sponsor must be confirmed and that he must not be the same sponsor who stood up for the person at baptism, nor may he be of a different sex from that of his ward (c. 795-796).

The *confirmandus* (who must always furnish proof of baptism) cannot have more than one sponsor. Nor can a person act as sponsor for more than two candidates. But for a just cause the minister of confirmation may allow a departure from this rule, e. g., if on a weekday it would be a hardship for a sufficient number of men to leave their employment in order to act as sponsors for a class of boys (cfr. c. 794). But it is left to the bishop or other minister to determine the sufficiency of the cause dispensing from the necessity of having individual sponsors.

Registration of confirmation— The pastor must enter into his confirmation register the names of those who are confirmed, the names of their parents and sponsors, the date and place of confirmation. This is to he a register distinct from the baptismal register (c. 798). It remains a distinct register even though bound together as a composite unit with the baptismal register. In addition the pastor must enter the fact of confirmation in the marginal space provided for that purpose in the baptismal register, entering it on the page where the baptism of the confirmed person is found. And if the confirmed person has been baptized in another parish it will be necessary to send a notification of the reception of confirmation to the pastor of the parish where the individual was baptized (c. 798; also above decree).

Chapter III

HOLY MASS

The celebret— A priest who desires to say Mass in a strange church should be furnished by his Ordinary, or in the case of Oriental priests by the S. C. for the Oriental Church, with testimonial letters called a celebret (Z*7 *him celebrate).* But the rector of a church may permit a visiting priest to say Mass without the celebret if the visitor is personally known to him; and even though he is not known to him, the rector may permit him to say Mass once or twice without the celebret, provided he wears the clerical garb (c. 804).

Bination— Excepting on All Souls' Day and Christmas Day when every priest may say three Masses, it is not allowed to binate unless permission to do so is obtained from the Holy Sec, or the local Ordinary. The local Ordinary may not permit bination for reasons of private devotion but only if on a holyday of obligation a notable part of the faithful (20 persons according to most authors) would miss Mass otherwise (cfr. c. 806). Priests in the United States usually receive general permission to binate in the diocesan faculties.

Eucharistic fast— No priest may celebrate Mass without fasting from midnight (c. 808). How midnight is to be reckoned we have already seen (cfr. p. 104). On March 22, 1923, the H. Office declared itself willing to dispense individual celebrants from the Eucharistic fast who suffered from frail health or otherwise found it a grave hardship to binate, or even to say one Mass at a late hour on Sundays and holydays of obligation *(Acta* XV, 151). Where several priests found the dispensation desirable due to general conditions in a diocese, e. g., missionary conditions, the Holy Office was willing to grant habitual faculties to the local Ordinary to dispense those priests. Until the individual priest or the local Ordinary requested this induit, the Ordinary' could not dispense his priests save in some individual urgent case by way of act, and on condition that no intoxicants he taken, but only nourishment by way of drink. Prior to this answer authors generally denied the applicability of the epikeia to permit a non-fasting priest to celebrate, save to finish a

Mass interrupted by a sick priest, or to consecrate particles for dying persons. In view of the more lenient attitude towards the Eucharistic fast as implied in the declaration just cited, it would seem that the rigorous opinion of former writers might be relaxed to permit a non-fasting priest who had broken his fast through inadvertance to say Mass on a Sunday or holyday of obligation *ad scandalum avertendum*. If time permits contacting the local Ordinary he should be asked to dispense in virtue of the faculty above described. If time does not permit such recourse, cpikeia can be invoked. Sick priests, whether secular or religious who cannot celebrate Mass fasting, but must take medicine, should apply to the II. Office for a dispensation, the petition to be endorsed by their Ordinary, and the prescription of the medicine to be included.

Application of Masses— A priest may apply Mass for any living or deceased person, but for living excommunicates he can apply Mass only privately, and if there is question of an *excommunicatus vitandus,* only for his conversion (c. 809). Since the canon is generally worded it follows that Mass can be said privately (without announcement from the pulpit) for any non-Catholic living or dead. But in the case of a deceased *non-baptized* person the very nature of the case precludes the application of Mass for his soul. Catholics who are denied Christian burial are likewise denied a funeral Mass and an anniversary Mass, not necessarily other public Masses.

Mass server— The priest should not say Mass without a server. The server may not be a woman unless she remains outside of the sanctuary and merely answers the prayers, e.g., in the case of a community of religious women (cfr. c. 813). While all will allow a priest to say Mass without a server if none is available on Sundays and holydays of obligation, yet what circumstances, if any, will permit a priest to say Mass without a server out of mere devotion is a very much disputed question. The safer procedure no doubt is to obtain an Apostolic induit, and such induit has been obtained by certain bishops of the United States after the Code, to permit their priests to say Mass without a server when none is available, on condition that they apply binated Masses, if any, for the benefit of the seminary or some other pious designated cause.

Time and place of Mass— Holy Mass may be said on any day of the year saving the last three days of Holy Week (c. 820). Even on these days Mass is always allowed in parish churches.

The bishop may by induit permit Mass on Holy Thursday in pious institutions. Mass may not be started earlier than one hour before dawn, nor later than one hour after midday (c. 821, §1). Since the Mass which is said at such early or late hours will probably

be a private Mass in the liturgical sense, any of the various ways of computing the hours as described elsewhere may be followed.

But .Mass may be said at midnight in parish churches on Christmas Eve (c. 821, $2). Holy Communion may be distributed at the parish Christmas midnight Mass (Code Comm., Mar. 16, 1936; *Acta* XXVIII, 178), unless the Ordinary forbids it in a particular case by reason of abuses (c. 869). Likewise in the chapels of religious and pious houses Christmas midnight Mass is permissible, and Communion may be distributed, as c. 821, S3 explicitly states. Midnight Mass is also allowed on the occasion of Eucharistic Congresses, Eucharistic triduums and sacred missions within the limits laid down in the letter of Pius XI, Mar. 7, 1924 *{Acta* XVI, 154), and the Declaration of the S. C. Sacr. of Apr. 22, 1924 *{Acta* XVII, 100).

Mass should be celebrated on a consecrated altar, and in a church or chapel. If in a church or public oratory, these must be consecrated or at least blessed (c. 822, SI)· Mass may not be said in private oratories habitually without the Apostolic induit of a private oratory (cfr. p. 514). Some clerics have by law, others by Apostolic induit, the so-called privilege of a portable altar, not to be confused with a movable altar as defined on p. 515. The privilege of a portable altar allows the beneficiary thereof to say Mass in any becoming place on an altar stone, but not at sea (c. 822, §2, 3). But the Apostolic Delegate can grant permission to celebrate Mass at sea (cfr. p. 743).

The local Ordinary, also the major superior of an exempt clerical religion in the case of his subjects, may permit that Mass be celebrated outside of a church or public or semi-public oratory but always on an altar stone and in a becoming place, hut never in a bedroom. This permission they may grant only for a just and reasonable cause in some extraordinary case and by way of act (c. 822, §4). Thus, e. g., if the chapel of a religious community is being renovated, permission could be granted to say Mass in some other part of the house until the renovations are completed; this would be an extraordinary case since renovations do not take place every day. It would also be *per modum actus* in the sense that the permission would be valid only *durante causa.* Priests on the missions often find it necessary to say Mass on Sundays in private homes. The local Ordinary would be competent by c. 822, §4, it would seem, to allow this practise, but he might specify in which houses Mass cbuld he said so that abuses would not creep in, this being the ultimate reason for the qualification *per modum actus.*

Mass stipends— A priest may not take a stipend for a Mass when he binâtes if he has already said, or will say, another Mass

from a title of justice. But on Christmas Day he may take a stipend for three Masses. And when he binâtes he may take an offering for the extrinsic work connected with the celebration of the extra Mass, c. g., if an assistant priest says one Mass in one church and applies the intention for a stipend, he may supply in another parish on the same day and receive a remuneration for his supply work from the pastor of that church (cfr. c. 824). Therefore, a pastor who applies the *Missa pro populo* on Sundays may not accept a stipend for his second Mass, saving conditions in the preceding sentence. Nor may he apply two Masses *pro populo* on a Sunday in case he is in arrears with such Masses. But a priest may accept a stipend for one Mass or apply the Mass *pro populo,* and apply the other Mass to satisfy an obligation not *ex justitia* but *ex cliaritate,* e.g., in the case of priests who belong to certain societies or associations whose by-laws impose this duty, or where the constitutions of a religion require the priests to say a certain number of Masses for the deceased members.

It is not allowed to accept two stipends for the same Mass, nor to accept one stipend for a Mass alrcadj due from a title of justice, e.g., the *Missa pro populo* (c. 825). As many Masses must be said as there were stipends offered, and if a person offered a sum of money for Masses, not indicating their number, the number should be reckoned according to the amount of the ordinary stipend prevailing in the place where the donor lives or lived (c. 828, 830).

The amount of the stipend is to be determined by the local Ordinary or by custom, and no priest may demand a larger offering, although he may accept a larger offering when spontaneously made, and he may accept an offering smaller than the usual stipend if the Ordinary does not forbid this (c. 831,832).

When a Mass is asked for a special day it must be said on that day; if for an urgent intention, e.g., a successful operation, examination, etc., it should be said in time to realize the petitioner's desire. If no special date was requested and the donor expressly left it to the priest to say the Mass at his good pleasure, the Mass should not be deferred longer than a year. If the donor did not explicitly authorize the priest to say the Mass whenever he wished, and at the same time mentioned nothing about the date, and the intention was not urgent, the Mass should be said within a short time, which according to the S. C. Council, *Ut Debita,* of May 11, 1904 is considered one month. This rule could work a hardship where many Masses arc offered to be said, save for the fact that the priest may ask the donor's permission to say the Mass at his convenience. For practical purposes it would seem that a general notice posted

in the parish office where Masses are registered, to the effect that all Masses will be said at the convenience of the priest, unless expressly stipulated for otherwise, might suffice (cfr. c. 834).

No priest should accept stipends which he cannot satisfy personally within a year, in the supposition that the donor requested that he personalty say the Masses (c. 835). Those who handle Mass intentions in great numbers should take care either to distribute them as soon as possible, or at least to send the superfluous number to their own Ordinaries at the end of the year, i. e., not at the end of the civil year, but at the end of the year allowed for their retention by c. 841. Hence, Masses received, e.g. on Jan. 25, 1947 should be sent to the Ordinary not later than Jan. 25, 1948 if they are still unsaid. We suppose these arc manual stipends whose date of satisfaction was left to the priest's choice. But before the expiration of the year the priest may distribute the superfluous Masses to any priest of his choice in whom he can have confidence that the Masses will be said (c. 838). Nor can a priest be forbidden to send manual Masses, i. e., Masses which have no enduring obligation attached to them as have founded Masses, outside of the diocese (S. C. Council, Feb. 19, 1921; *Jeta* XIII, 228).

Those who transmit Mass intentions must send the entire stipend, unless the donor expressly permitted the sender to retain something for himself, or the excess of the diocesan tax was obviously given *intuitu personae,* e.g., if a pastor received 10 dollars on his birthday with the request that one low Mass be said on that day for the donor, and a *Missa pro populo* must be said on the same day, the pastor may keep nine dollars and request another priest in consideration of one dollar to say the Mass on the designated day (c. 840, §1). Those who send Masses away arc responsible for them until they receive notice that the Masses have been accepted and will be said (c. 839, 829).

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Chapter IV

HOLY COMMUNION

When a pastoral function—Only the pastor may bring communion *publicly* to the sick, while any priest may do so privately (c. 848, 849). in this country communion is not taken publicly to the sick. Likewise, only the pastor may carry *Holy f'iaticurn* either privately or publicly to the sick in his parish, but in case of necessity any other priest may presume the pastor's permission (c. 850). First Communion is not a pastoral function since one may receive his First Communion from any priest. But it is the right of the proper pastor to remonstrate if the child is not sufficiently instructed and disposed in his judgment (c. 854, §5). In this country where non-parochial churches are the exception the case will seldom occur of a person approaching the Holy Table for the first time save in his parish church, unless we except Catholic boarding schools and orphanages.

Who arc to be debarred—*Public* sinners are to be refused communion even publicly. *Occult* sinners cannot be refused communion publicly, but only if their approach to the Holy Table is occult. In both cases it is understood that there has been no repentance (c. 855). Children who have not sufficient understanding of the sacrament should be debarred. But in danger of death less discernment is required, and it suffices that the child be able to distinguish the sacrament from ordinary bread (c. 854, §2, 3).

Eucharistic fast—Those who wish to communicate must under pain of mortal sin have observed the natural fast from midnight (c. 858). Midnight may be computed in any of the various ways described on p. 104. However, those who have been sick for a month, and are still confined to bed at least most of the time, and where there is no hope of an early recovery (three dajr$), may. if the confessor approves, receive Communion once or twice a week without fasting, taking something by way of medicine or liquid nourishment (c. 858. §2). Likewise holy communion by way of the Viaticum may be given in danger of death to non-fasting persons (c. 858, §1) ; and this is allowed daily, namely, as long as the crisis,

or danger of death, continues (c. 864, §3; 858, §1); cfr. also the quinquennial faculties on pp. 735, 744, 747.

Easter Communion—Every Catholic is bound under pain of mortal sin to receive communion at least once a year, and this during the Easter season. By common law this season runs from Palm Sunday to Low Sunday, but the local Ordinaries may for just reasons extend it from the fourth Sunday of Lent to Trinity Sunday (c. 859). In virtue of an induit granted by the Holy See to the United States and promulgated in the II Plcn. Council of Baltimore, n. 257, our Easter season extends from the *first Sunday* of Lent to Trinity Sunday unless the local Ordinary for good reason deems it expedient to restrict the induit. In virtue of c. 4 of the Code this privilege remains even today. If a Catholic has good reason for deferring the Pascal precept, he may do so with the approval of his pastor or confessor (c. 859).

Time and place of Communion—Holy communion may be given on any day of the year. But on Good Friday it may only be administered as Viaticum, and on Holy Saturday only to those who receive during or immediately after the Mass. Holy communion may be given at any hour when the celebration of Mass is permissible, and even outside *of* those hours, for good reasons. But Viaticum may be received at any hour of the day or night (c. 867).

Communion may be distributed in any place where Mass can be said, unless the local Ordinary forbids its distribution in some particular place for a just cause (c. 869). Thus, while there may be no abuse likely to result from the mere celebration of Christmas midnight Mass in a parish church, the bishop could forbid the distribution of communion, e. g., if it is feared that the sacrament may be exposed to irreverence by carousers.

Chapter V

CONFESSION AND INDULGENCES

ART. I

Confession

To hear confessions validly, priestly orders do not suffice but jurisdiction is also required (c. 872).

Who grants penitential jurisdiction—The local Ordinary of the place in which the confessions arc heard gives delegated jurisdiction to both secular and religious priests to hear confessions (c. 784, §1). And this jurisdiction avails to hear even the confessions of novices and the professed of clerical exempt religions, and to absolve them from all sins and censures reserved in the religion (c. 519). But general delegation does not suffice, and a special delegation is required to hear the confessions of *religious women* and their novices, saving the exceptions already mentioned on p. 318 (c. 876).

But if there is question of hearing the confessions of the professed in clerical exempt religions, delegated jurisdiction can be granted *also* by the superiors of the religion; those superiors, namely, who arc authorized by the constitutions to delegate faculties. And at the same time the superiors can delegate faculties to hear the confessions of the novices and of those who live in the religious house day and night as servants, students, guests or patients. And these faculties the superior may grant not only to priests of his own religion but also to secular priests and to priests of another religion (c. 875). However, it is not necessary to have the superior's delegation to hear the confessions of these persons validly and licitly, but the diocesan faculties suffice.

In virtue of their office pastors have *ordinary* (not merely delegated) jurisdiction to hear confessions (c. 873, §1). Yet contrary to the general principle that he who has ordinary jurisdiction may delegate it, pastors may not delegate others to hear confessions (Code Comm., Oct. 16, 1919; *Acta* XI, 477). Hence, if the pastor invites a priest to supply for him, or to give a mission or retreat, and the

priest comes from another diocese, the pastor must obtain faculties from the local Ordinary. But the local Ordinary may delegate pastors habitually to subdelegate priests to hear confessions in the parish, and some diocesan statutes authorize all priests in the diocese to subdelegate any visiting priest to hear their own confessions.

Extent of faculties— In this country, although the bishop could restrict confession faculties to certain penitents by reason of sex, age, territory, etc., this is not generally done, and one who obtains the faculties of the diocese may hear confessions anywhere in the diocese of all penitents saving, within limits, religious women and their novices.

Likewise he who has confession faculties in a diocese can validly and licitly absolve all who come to him, be they residents of the parish and diocese or not (c. 881), a departure from the principle that contentious jurisdiction can be exercised only over one's subjects.

Confessions in danger of death— Every priest, whether approved for confessions or not, may validly and licitly absolve any penitent in danger of death from all sins and censures no matter how reserved, even though a priest with faculties is present. But outside the case of necessity a confessor cannot licitly (although he can validly) absolve his accomplice in a sin *contra sextum* in «langer of death. And a priest who absolves a penitent in danger of death from a censure *ab homine,* or a censure reserved to the Holy See *specialissimo modo,* must enjoin upon him the obligation described on p. 701 (c. 882).

Confessions at sea— Any priest who has received confession faculties from his own *local* Ordinary (not merely from the religious superior, cfr. Code Comm., July 30, 1934; *Acta* XXVI, 494) can, while on an ocean voyage, hear the confessions of any passengers. And if the vessel stops at a port along the way, the priest may go ashore, and for the space of three days (Code Comm., May 20, 1923; *Acta* XVI, 114) absolve any penitents even from cases reserved to the local Ordinary (c. 883).

Superiors hearing the confessions of subjects— The novice master or his assistant, and the superior of a seminary or college, should not make it a rule to hear the confessions of the novices or students, although the confessions would not be invalid. But they may hear their confessions by way of exception in urgent cases (c. 891). This rule is to safeguard the seal* of confession, the observance of which in the cases described might hamper the free exercise of the superior's authority in the extra-sacramental forum.

Reserved sins— Those who have ordinary jurisdiction to grant confession faculties and to inflict censures, e.g., the bishop and

regular superiors, but not the vicar-general, can reserve the absolution of certain sins to themselves, when they deem this necessary to eradicate some inveterate crimes and to restore Christian discipline (c. 893-898). They may reserve the sin in either one of two ways: *ratione sui* or *ratione censurae.* In either event we may speak in generic terms of a *reserved case.* The rules governing reserved sins *ratione censurae* arc found hereafter in our Book V. We speak now of sins reserved directly, i.e., *ratione sui,* and it is in this way that bishops usually reserve sins and which a person has in mind when he speaks of diocesan reserved cases.

Although the Code reserves many offenses *ratione censurae,* there is only one sin reserved by common law *ratione sui,* namely, the crime of accusing an innocent confessor of the sin of solicitation, absolution from which offense, or faculties to absolve therefrom, must be asked of the Holy See (c. 894).

Faculties to absolve from a *diocesan* reserved sin must be sought of the local Ordinary. But there arc exceptions. Pastors have by c. 899, S3 the right to absolve from diocesan reserved sins during the entire Pascal season, and missionaries have this same right during the time of a mission. Moreover, the reservation itself ceases, and no special faculty to absolve is necessary: 1) if the penitent is confessing preparatory to marriage, e.g., the parties had contracted a civil marriage (supposing this is a reserved sin in the diocese), and now confess preparatory to having their marriage validated in the Church; 2) whenever the superior, having been asked for faculties, refuses; 3) whenever there is danger of violating the seal of confession in asking for faculties; 4) whenever it would prove a grave hardship to the penitent to wait until the faculties are obtained, and this need not be done by phone, and a delay of one day would seem a grave hardship the same as in the case of censures (cfr. 703); 5) as often as the penitent confesses outside the territory of the superior who reserved the sin even though he leave the territory on purpose to get absolved (c. 900). But he must go to a diocese where the same sin is not reserved since reservations directly restrict the power of the confessor. And so if a penitent who has committed an offense not reserved in his diocese comes to another diocese where the sin is reserved, he cannot be absolved without special faculties (Code Comm., Nov. 24, 1920; *Acta* XII, 575). It should be noted that c. 900, just cited, states cases in which reserved *sins* cease to be reserved, but the rules there described do not cover diocesan reserved *censures,* these being regulated by c. 2252, 2254 (Code Comm. Nov. 10, 1925; *Acta* XVII, 583).

Place of confessions—The proper place to hear confessions is

a church, or public or semi-public oratory, although men's confessions may be heard even in private homes (c. 908, 910). Women's confessions may be heard outside of a church, or public or semi-public oratory only in case of sickness or of real necessity. When heard in a church or a chapel, they (also male penitents according to the Code Comm., Nov. 24, 1920; *Acta* XII, 576) should confess in the confessional or at a confessional screen (c. 909, 910). The rules just stated affect the licitness, not the validity, of confessions.

ART. II

Indulgences

General conditioni for gaining indulgences—These may be reduced to three: 1) one must be in the state of grace at least at the completion of the last of the prescribed works; 2) he must have at least a general intention of gaining the indulgence; 3) he must fulfill the prescribed works (c. 925).

Special conditions—These vary according to the particular indulgence in question. If a visit to some church or chapel is required, this may be done any time from noon of the vigil to midnight of the feast (c. 923). If a church, but no church in particular, must be visited, those who lead a common life in some ecclesiastical institution may visit the chapel of their institution (c. 929).

If confession and communion are prescribed, the confession can be made within eight days preceding or following the feast. Communion can be received any day from the vigil to the last day of the octave of the feast. Those who are in the habit of confessing at least twice a month need make no special confession for the indulgence, except it be a jubilee indulgence (c. 931).

If prayers for the Roman Pontiff in general are prescribed, these should be said by moving the lips, but the faithful may choose any prayers they please (c. 934, $1). If a visit to a church is prescribed together with prayers according to the intention of the Sovereign Pontiff, these must be six Paters, Aves and Glorias (S. Penitentiary, July 5, 1930; *Acta* XXII, 363).

One cannot gain an indulgence by performing a work already obligatory, e.g., attendance at Sunday Mass cannot be counted for a visit to the church (c. 932).

Those who cannot perform some prescribed work, e.g., a visit to a designated church, may have it commuted by the confessor to some other work (c. 935).

A person cannot gain the same plenary indulgence more than once a day, unless, as in the case of the Portiuncula Indulgence, or

on All Souls' Day, etc., the contrary is expressly stated in the indulgence (c. 928). But *if* plenary indulgences are attached to different works, and these arc performed even on the same day, several indulgences may thus be gained, e. g., an indulgenced visit and the indulgenced prayer after communion combined.

Indulgences attached to rosaries or other articles are only then lost when the article ceases entirely to exist, or is sold (c. 924, §2). Hence, it may be given away without prejudice to its indulgences.

Indulgences in particular—Concerning the nature of the various particular indulgences, e.g., the Portiuncula Indulgence, Apostolic indulgences, the indulgence of the Way of the Cross, the indulgence of a privileged altar, etc., as also the rules governing their acquisition, the nature of our manual precludes our considering such questions in detail. For further information we might refer the reader to *Pastoral Companion,* p. 125-160 (4th cd.) and to Sabetti-Barrett, *Compendium Theologiae Moralis,* η. 1052-1061.

As to the numerous declarations issued by the Holy Sec since the Code concerning indulgences, these may be learned from Bouscaren, *Canon Law Digest.* Of these we would mention only three at this time in addition to those given in this article: 1) The privileges are revoked which certain associations had hitherto possessed of conferring upon their priest-members any or all of the following faculties: to bless articles with the Apostolic indulgences, or with the Brigitine indulgence, to indulgence rosaries in any other way, to bless crucifixes with the Station indulgences or with the indulgence to be gained at the hour of death, to give the papal blessing at the end of sermons, and to grant the indulgence of the privileged altar. Religious organizations, however, retain the indulgence privileges which they had possessed, but they cannot confer them on outsiders of the religion (S. Penitentiary, Mar. 20, 1933; *Acta* XXV, 170). But this declaration does not deprive priests of the faculties which they had gained by membership in the said associations prior to the declaration (S. Penitentiary, Mar. 2, 1937; *Acta* XXIX. 58). Hence, priests who after that declaration desire to obtain the faculties mentioned must apply directly to the S. Penitentiary. 2) Apostolic indulgences may be attached to glass beads provided these are solid and not easily broken (S. Penitentiary, Dec. 21, 1925; *Acta* XVIII, 24). 3) Only those general indulgences granted between 1899 and 1928 are to be considered authentic which are found in the collection published by the Vatican Press and approved by the S. Penitentiary under date of Feb. 22, 1929 (S. Penitentiary, Feb. 22, 1929; *Acta* XXI, 200).

Chapter VI

EXTREME UNCTION

Minister of the sacrament— It is a right reserved to the pastor to administer Extreme Unction to any and all persons in his parish who arc in danger of death. But a few cases arc excepted:

1) The dean among the diocesan consultors administers the sacrament to the bishop (c. 397, n. 3; 427) ;

2) The local superior in clerical religions gives this sacrament to the novices, to the professed religious, and to all who live in the religious house day and night as students, guests, servants or patients ;

3) The ordinary confessor gives the last sacraments to a nun;

4) The chaplain performs this duty in lay religions other than monasteries of nuns;

5) Any priest may give the last sacraments to any dying person with the reasonably presumed permission of that pastor, confessor, or chaplain to whom their administration is otherwise reserved (c. 938).

Subject of the sacrament— Only those who arc in danger of death from old age or sickness can be anointed (c. 940, §1). Hence, not those who are about to undergo the penalty of death, or who happen to be in a shipwreck, etc., for here danger of death arises from external causes, not necessarily from sickness.

The sacrament may not be repeated in the same danger of death, but only after the person has rallied out of the crisis and again becomes deathly sick (c. 940, §2).

If there is doubt whether a child in danger of death has attained the age of reason. Extreme Unction can be conferred conditionally: *si capax es.* The same is true if there is doubt whether a person is in real danger of death, although the physician's advice may be followed. Again, the sacrament may be administered conditionally to one who had probably rallied from his critical condition, e.g., in the case of consumptives, persons suffering from heart attacks, etc., in case they become worse. Likewise, the sacrament is admin-

istered conditionally in case there is doubt whether one is alive or dead; one-half hour being allowed after the last breath in the case of slow death, and a whole hour in the case of sudden death (cfr. Sabetti-Barrett, o. c., n. 828, q. 6). Finally, the sacrament is given conditionally to him who died in sin, but who was not absolutely opposed to the sacrament during life or to religion in general, so that there is room for believing that he could have repented (c. 942).

The sacrament should be administered unconditionally to persons destitute of their senses who by a Christian life impliedly requested the sacrament and would have asked for the priest had they been able (c. 943).

Rites and ceremonies— If time is urgent, one anointing or unction suffices, preferably on the forehead, and the remaining unctions should be supplied if the crisis passes. The anointing with one unction is accompanied bj' the words: *Per istam sanctam unctionem indulgeat tibi Dominus quiquid deliquisti. Amen.* And the supplied unctions are given unconditionally. The anointing of the loins is always omitted. And the anointing of the feet may be omitted for any just cause (cfr. c. 947).

Chapter VII

HOLY ORDERS

We shall consider holy orders in four articles as follows: 1) the minister of ordination; 2) the subject of ordination; 3) the preliminaries to ordination; 4) the time, place and registration of ordination.

Whenever *major* orders or *sacred* orders arc mentioned, we mean by these terms, as does also the Code, the priesthood, the diaconate and subdiaconate.

ART. I

Minister of Ordination

The ordinary minister of sacred ordination, including episcopal consecration, is a bishop. But no bishop may licitly consecrate another bishop without authority of the Roman Pontiff. Moreover, he should employ two other bishops to assist him in this ceremony (c. 951-954).'

Although the ordinary minister of ordination is a bishop, still a priest may confer tonsure and minor orders if he has received this power by law or induit. As we have seen, abbots and prelates *nullius,* vicars and prefects Apostolic, and cardinals, even though these should all happen to be only priests, may give first tonsure and minor orders in virtue of the law itself. Tonsure and minor orders arc of ecclesiastical institution, and it belongs to the Church to determine their ministers. However, priests must be considered only *extraordinary* ministers in such cases.

Though everj' bishop is the ordinary and valid minister of sacred ordination, not every bishop is the licit minister. The *licit* minister is the *proper* Ordinary. In the case of secular candidates this will be cither: 1) the bishop of the diocese where the candidate has his place of origin joined with domicile, and here the candidate may be ordained without the necessity of taking an oath to serve the diocese forever; or 2) the bishop of the diocese

where the candidate has his present domicile, though it be not his place of origin, but in this case the candidate must upon receiving first tonsure take an oath to serve the diocese forever, lest he later be tempted to return home, i.e., to his diocese of origin (c. 950).

It sometimes happens that a candidate has difficulty in being ordained for the diocese of his present domicile because the diocese is already plentifully supplied with priests. Should the candidate succeed in finding some benevolent bishop who is willing to accept his services, the bishop of the diocese where he has his present domicile remains his proper bishop as concerns *ordinations* including first tonsure, and this during the whole course of the candidate's studies, supposing that the candidate will not take up his domicile in the new diocese until he is ordained to the priesthood. When receiving first tonsure from his proper bishop the candidate will take an oath to serve not the diocese of his proper bishop, but the diocese of the bishop who has promised to accept his services later on. By this first tonsure the cleric becomes incardinated into the diocese of the benevolent bishop who has consented to his services.

When the bishop is lawfully impeded from ordaining his own subjects, he gives them dimissorial letters in virtue of which they may be licitly ordained by another bishop *{litterae dimissoriales,* from *dimittere,* to send). No bishop may lawfully ordain the subjects of another bishop without these dimissorial letters. The reason is, among others, that these letters testify, at least virtually, to the candidate's fitness, canonical title, completion of studies, freedom from irregularities, etc., (c. 955, §1 ; c. 958, §1).

The proper bishop for the ordination of *religious* is the bishop in whose diocese the religious is domiciled. This will usually be the diocese where the religious seminary is located in which the religious is pursuing his clerical studies. If the religious belongs to an *exempt* Order or Congregation, no bishop may ordain him without *dimissorials* of his major superior. Having received these no further testimonials are required, or rather the dimissorial letters in themselves virtually amount to testimonial letters. If the religious belongs to a non-exempt Congregation, the ordaining bishop needs only *testimonial* letters from the major superior, since the latter, having no jurisdiction in the strict sense of the word, is not qualified to issue dimissorial letters to his subjects (c. 964-965).

If the proper bishop is impeded from ordaining a religious, and the religious belongs to an exempt community, the major superior issues dimissorial letters permitting the subject to be ordained by any outside bishop willing to ordain. But the subject must be fur-

nished with *testimonial* letters of the local Curia testifying to the fact that either the bishop cannot, or will not, hold ordinations at the next general ordination season, or that the see is temporarily vacant. If the religious belongs to a non-exempt religion, the local Curia issues *dimissorial* letters, and the major superior *testimonial* letters concerning the candidate's fitness (c. 966).

If the territory in which the candidate, whether secular or religious, is domiciled is not a diocese, the licit minister of ordination will be the local vicar or prefect Apostolic, or the abbot or prelate *nullius,* as concerns tonsure and minor orders, and even as concerns major orders if these prelates happen to have the episcopal character. If they arc not bishops, it is still their exclusive right to issue dimissorials to their secular and religious non-exempt subjects for major orders. Exempt religious, not being subjects of the local Ordinary, will receive dimissorials from their own major superiors (c. 957; 958, §1, n. 4).

ART. II

Subject of Ordination

By divine law three conditions are required on the part of the candidate for the *validity* of ordination: 1) that the candidate be a male person; 2) that he be baptized; 3) that he have the intention to be ordained. These requirements are explained at length in books of dogmatic theology.

At this place we are concerned with the requirements for *Heit* ordination, and insofar as those requirements are the object of canonical legislation. Of these requirements some are of a *positive,* others of a *negative* character.

§1. Positive Requirements (c. 968-982)

Age—For first tonsure and minor orders the Code directly specifies no minimum age. We say directly, because indirectly a certain age limit is determined impliedly by the law which states that first tonsure and minor orders cannot be conferred before the candidate has begun his theological course (c. 976, 81).

Subdeaconship cannot be given before a man is 21 years of age, nor deaconship before the 22nd, and priesthood not before the 24th year of age without Apostolic dispensation (c. 975).

Studies—Neither a secular nor a religious candidate can receive tonsure and minor orders before his theological course is begun. Subdeaconship may not be given before the end of the third year of theology, deaconship not before the fourth year of theology is begun, priesthood not before the beginning of the second semester of the fourth year of theology (c. 976).

Moreover, in the case of religious it is required that they shall have taken perpetual vows before being promoted to *major* orders. If perpetual vows are not taken in the institution, or no vows whatever, three years must have elapsed since the end of tite novitiate before major orders may be received (c. 964, n. 3).

Ordination by sequence—Orders must be conferred in the proper sequence, and no one may licitly be ordained by leaps, i.e., without first having received all the orders lower to the one in question (c. 977).

The proper sequence is the following: 1) tonsure; 2) doorkeeper; 3) lector; 4) exorcist; 5) acolyte; 6) subdeacon; 7) deacon; 8) priest.

Interstices—The interval between the reception of one order and another is called an interstice. Canon law requires that such interstices be observed so that the candidate may exercise himself properly in one order before being promoted to a higher order. Otherwise the law requiring ordination by degrees as in the preceding section would have no meaning.

The interval between first tonsure and the first minor order is left to the discretion of the bishop. The same is true of the intervals between the several minor orders.

Between the last minor order (acolyte) and subdcaconship one year must intervene; between subdcaconship and deaconship three months; between deaconship and the priesthood three months.

Although the bishop may dispense and allow a shorter interval than described in the preceding paragraph if the need or utility of the diocese justifies it, he may not without Apostolic induit confer on the same day: 1) all minor orders and the subdeaconate; or 2) two major orders; or 3) first tonsure and a minor order; or 4) all minor orders (c. 978).

The canonical title—The canonical title is a surety for the decent maintenance of the cleric in perpetuity. It is required only for major orders. The reason is that a cleric in minor orders without the obligation of celibacy, is freer to return to the world and leave the clerical ranks. The canonical title must be one of those recognized by the Code.

For secular candidates there arc five possible titles: 1) the

title of benefice; 2) the title of patrimony; 3) the title of pension; 4) the title of service of the diocese; 5) the title of service of the mission in countries subject to the Congregation of the Propaganda. The latter two titles are only subsidiary ones, and can lx? invoked only in default of any of the first three. They were introduced and acknowledged as sufficient less than a century ago after the disturbances brought about by the French Revolution rendered the title of benefice in European countries more and more precarious (c. 979-981).

The vast majority of the secular clergy in the United States are ordained on the title of service of the diocese. It is true that after a number of years most priests are given parochial benefices, but until then thev arc maintained by salaries not in the nature of benefices (c. 981, $2).

Religious with solemn vows have as their canonical title rhe title of poverty *(titulus paupertatis).* Religious in Congregations of simple vows invoke the title of the common table *(titulus mensae communis),* or the title of the Congregation *(titulus Congregationis),* or something similar. In all these cases it is the Order or the Congregation which sponsors the goods of the community as a becoming support for its clerical members. But religious in a community which admits only temporary vows, likewise members of clerical societies who take no vows, arc governed, as regards the canonical title for ordination, bv the same law as secular candidates (c. 982).

§2. Negative Requirements
(c. 983-991)

The negative requirements in the candidate of ordination for the licit reception of holy orders fall into two categories: 1) freedom from irregularities; 2) freedom from impediments.

A. Irregularities and Impediments in General

An *irregularity* is a *permanent* obstacle to holy orders, or to the exercise of orders already received. A simple *impediment,* on the other hand, is a *temporary* obstacle. Hence, irregularities can be removed only by a dispensation, whereas an impediment can cease of itself (c. 983).

Irregularities arc of two kinds: irregularities from defect *(irregularitates ex defectu),* and irregularities from crime *(irregularitates ex delicto).*

Irregularities arising from defect are those which have their source in some defect of the candidate, which while not of an incriminating nature, yet impedes or lessens one's usefulness in the sacred ministry. What these defects arc we shall sec directly. It must be noted that a dispensation from such irregularity is reserved to the Holy Sec.

Irregularities *ex delicto* arise from certain specified crimes of such enormous nature that discredit to the clerical state in general would result if a man guilty of one of these crimes were promoted to orders, or permitted to continue the exercise of the sacred ministry. Irregularities from crime may he public or occult depending upon whether the crime itself is public or occult. From public irregularities *ex delicto* the Holy See alone dispenses. From occult irregularities, even outside of urgent cases, the bishop, and with respect to his own subjects the major superior, may dispense. In urgent cases of occult irregularities *ex delicto* any confessor may dispense but only to the extent of permitting the exercise of orders already received, and provided grave harm, e.g., loss of good name, would result to the cleric from the non-exercise of the order. Excepted from these faculties is the irregularity arising from voluntary homicide or abortion (c. 990).

When applying for a dispensation from irregularities and impediments, one should mention their precise number. In this connection let it be remembered that irregularities and impediments are multiplied only by a multiplication of different, not of the same, sources. '1'hus, a crippled illegitimate labors under two irregularities; but a judge who has pronounced several death sentences is detained by only one irregularity. But irregularities and impediments omitted in good faith in the petition, e.g., through oversight, will be covered by the dispensation, excepting irregularities arising from voluntary homicide and abortion (c. 991).

Unless the rescript explicitly states otherwise, a dispensation from an irregularity does not extend to allowing a cleric to be chosen a cardinal, bishop, abbot or prelate *nullius,* or a major superior in a clerical exempt religion (c. 991).

Ignorance of irregularities and impediments will not excuse from incurring them. This applies even where the ignorance is involuntary. The reason is that the law establishing irregularities and impediments has for its object primarily the good of the community; hence, in the case of irregularities *ex delicto* the penal character of the law is only a secondary consideration (c. 988).

Lest the right to embrace the clerical state be unduly curtailed by local Ordinaries and religious superiors, the Code rules that only

those are to be considered irregular who arc listed as such under c. 984 sq.

B. Irregularities and Impediments in Particular

(1) *Irregularities ex defectu*

(c. 984)

The following arc irregular by *defect'.*

1) Illegitimates, unless a person was legitimated through solemn religious profession, or through the subsequent marriage of his parents;

2) Bodily defectives. Here the defect must be enormous, and of such nature that it hinders one from officiating at divine services cither safely because of weakness, or becomingly because of deformity. The defect may be in the sight, hearing, hands, limbs, or general bodily stature and carriage. In case of doubt the decisions of the S. C. of the Council should be studied, unless the Ordinary prefers to dispense in virtue of c. 15;

3) Epileptics, insane persons, and those possessed by the devil. Should these defects arise only after ordination, the Ordinary may, upon the cleric's recovery, permit the exercise of orders already received ;

4) Bigamists, i.e., men who have contracted two or more valid successive marriages;

5) A judge who has pronounced sentence of death, as also the executioner of the sentence;

6) Persons who labor under infamy of law.

(2) *Irregularities ex delicto*

(c. 985)

The following arc irregular *ex delicto:*

1) Apostates from the faith, heretics and schismatics. But if these persons have been converted, they do not labor under irregularity, provided they had been bona fide heretics and schismatics (cfr. c. 986) ;

2) Those who permitted themselves to be baptized by a non-Catholic outside the case of necessity;

3) A man who has attempted marriage with a *married* woman, or with a woman under *religious* vows; or has contracted *civil* marriage with any woman, or even any marriage with a free woman, but himself being in *major orders;*

4) Persons guilty of voluntary homicide or abortion;

5) Those who have voluntarily mutilated themselves, or have attempted suicide;

6) Clerics who, in violation of canon law, have practised medicine or surgery from which death followed;

7) Men who exercised an order which they had not received, or an order which they had received but which they were forbidden to exercise by reason of excommunication, suspension or interdict. However, the order must have been exercised in a solemn manner. Hence, a cleric in minor orders who, when acting as subdeacon, omits the maniple, the pouring in of the water, the drying of the chalice, and the touching of the chalice *infra actionem Missae* would not incur the irregularity.

In the above cases an irregularity will not arise save from a crime which is: 1) gravely sinful; 2) committed after baptism; 3) external, even though it be not public (c. 986). Therefore, ex-soldiers are not irregular who killed the enemy in battle out of self-defense rather than from malice.

(3) *Simple Impediments*
(c. 987)

The following are impeded from orders only temporarily, i. e., as long as the impediment, which by its nature is temporary, continues:

1) Those men whose parents are non-Catholics. This impediment exists as long as the parents continue in their error. If only one parent is a non-Catholic, whether father or mother, the impediment is present, even though they contracted their mixed marriage *coram Ecclesia* with a lawful dispensation after the usual promises were given (Code Comm., Oct. 16, 1919; *Acta* XI, 478). But only the descendants in the paternal line in the *first* degree are impeded (Code Comm. July 14, 1922; *Acta* XIV, 528). In other words, the teaching of pre-Code canonists no longer holds. They taught that if either of the paternal grandparents was a non-Catholic, the impediment was still present, even though the candidate's father had always been a Catholic. The religion of the maternal grandparents was always ignored. Now it is the candidate's ascendant in the first degree only of the paternal line that need be considered, i. c., his father. Naturally, his ascendant in the first degree of the maternal line, i.c., his mother, must be included as the canon expressly states, so that if she is a non-Catholic, the impediment is verified. This was old law likewise. It is disputed whether the impediment ceases

only upon the conversion of the parent, or likewise upon his or her death. Canon 15 says that in a doubt of law, the law does not bind;

2) A married man during the lifetime of his wife. But if the wife consents to his studying for the priesthood, a dispensation from the Holy See can be requested;

3) Men engaged in business forbidden to the clergy, until they resign their business and settle their accounts;

4) Slaves in the strict sense of the word;

5) Those who by the law of the country are held to military training, and as long as they have not finished their training;

6) Converts, until the Ordinary judges that they have been sufficiently tried;

7) Men who have lost their good reputation, and as long as in the judgment of the Ordinary the infamy of fact continues.

ART. III

Preliminaries to Ordination

In his letter to Timothy, St. Paul says: "Impose not hands lightly on any man; neither be partaker of another man's sins (I Tim. V, 22). In this spirit c. 973, §3 rules that "the bishop shall not confer sacred orders upon any man of whose canonical fitness he is not assured by positive proofs; otherwise, not only does he himself sin gravely, but he exposes himself to the danger of cooperating in the sins of others."

Positive proofs concerning the candidate's fitness for holy orders may be reduced to five categories: 1) testimonial letters; 2) examination in the subject matter of the particular order to be received; 3) the publication of the banns of ordination; 4) personal inquiries into the candidate's past life and present character; 5) spiritual retreat.

§1. Testimonial Letters (c. 993-995)

The following testimonials must be submitted to the proper bishop before each ordination by all secular candidates, and by religious candidates who do not belong to an exempt religion.

1) Testimonials of baptism and confirmation for the reception of first tonsure. After tonsure has been conferred, the baptismal and confirmation certificate need not be submitted again;

2) Testimonials concerning the reception of tonsure, or the last order received.

3) Testimonials concerning the completion of those studies which the law requires must be completed for the desired order in question ;

4) Testimonials from the rector of the seminary concerning the candidate's behavior, good conduct, and moral character;

5) Testimonial letters from those local Ordinaries in whose territory the candidate lived for at least six months after reaching the age of puberty. The object of this ruling is chiefly to ascertain that the candidate is not a married man;

6) Testimonials from the major superiors in the case of non-exempt religious candidates.

In the case of candidates who belong to an *exempt* religion none of the above testimonials need be submitted to the proper local Ordinary. The major superior issues dimissorial letters, and these suflice. In his dimissorial letters the superior testifies that the candidate is a professed member of his religion, that he is *de familia* of this or that particular religious house, that he has completed the studies required by the law, that he is free from irregularities and impediments, and that he has taken the oath of which mention will be made directly.

§2. Examinations

(c. 996-997)

Every candidate for holy orders, whether a secular or a religious, must undergo an examination in the subject matter of the particular order he is about to receive. In addition, the candidate for major orders must be examined in some branch of theology which he has completed.

It is the right of the bishop to decree the method to be followed in conducting the examination, to appoint the examiners, and to determine the tracts of theology in which the candidate should be examined. Generally speaking, religious candidates take this examination before their own superiors, or the delegates of the latter, c. g. the seminary professors; and the bishop may be satisfied with the results of the examination as testified to by the superior. But should the bishop have doubts concerning the candidate's scholastic fitness, he may refuse to ordain him.

§3. Ordination Banns

(c. 998)

Unless the Ordinary secs fit to dispense, the name of the candidate for *major* orders must be called out in his parish church on a Sunday or holyday of obligation, at least once for each major order. But in the United States contrary custom seems to have rendered this law obsolete. The purpose of the banns is to make sure that the candidate is not a married man.

Religious with perpetual vows are exempt from the obligation of having their ordination banns published.

§4. Measures to Insure the Candidate's Calling

Both the S. C. of the Sacraments on Dec. 27, 1930, *{Ada* X XIII, 120), and the S. C. of Religious on Dec. 1, 1931 (*Ada* XXIV, 74) issued lengthy instructions describing measures to be taken prior to ordination to determine a candidate's calling for holy orders. These two instructions arc found in their complete English version in Bouscarcn, *Canon Law Digest,* vol. I, p. 463, *sq.*

In the case of *secular* candidates:

1) Before the reception of *tonsure* and *minor* orders the candidate must present to the rector of the seminary a written petition in which he states that he is asking for first tonsure and minor orders of his own free will. At this time, also, the pastor must submit to the proper bishop a written report concerning the candidate's origin, parentage, childhood training, and present moral character.

2) Before the reception of each *major* order the candidate must present a sworn declaration to the effect that he spontaneously desires to be ordained, and that he is fully aware of the obligations attaching to major orders, especially that of celibacy.

In the case of *religious* candidates:

1) The novice must, before professing temporary vows, submit a written statement to his superior in which he declares that he is firmly convinced of his vocation to the religious and clerical life, and that he is resolved to devote his lifelong services to the sacred ministry and to his religion;

2) Before subdeaconship, or before professing solemn vows in the case of religious who belong to a religion where solemn vows are taken, the religious must submit a signed and sworn statement to his superior to the effect that he freely asks to be ordained, and that he fully understands the nature of the obligations attaching to major orders.

3) When issuing dimissorial letters, (or testimonial letters in the case of non-exempt religious), the superior must mention the fact that the above declarations have been made and are on file in the archives.

§5. Spiritual Retreat
(c. 1001)

As a further test of his vocation the Code requires that the candidate make a retreat before each ordination.

A retreat of three days is prescribed for tonsure and minor orders. A retreat of six days is required before each major order is received. But if two major orders are received within six months, the bishop, or the major superior of an exempt religion, may shorten the retreat to three days for the diaconate, and this for their respective subjects. If by a special induit the interstices between the major orders are not observed, and the ordinations follow very closely upon one another, the retreat for subdeaconship should last six days, and at least one day of retreat should precede the other two major orders (S. C. Sacr. Apr. 27, 1928; *Acta* XX, 359).

If the ordinations are deferred longer than six months, it is the right of the Ordinary (major superior for exempt religious) to determine whether the retreat should be repeated.

The superior of the retreat house must notify the proper Ordinary of the outcome of the retreat made by secular candidates.

ART. IV

Time, Place, and Registration of Ordination

§1. Time of Ordination
(c. 1006-1007)

First tonsure may be given on any day and at any hour. Minor orders may be given on Sundays and double feasts, but in the morning. Major orders must be conferred as a rule on the six general ordination days of the year, i.e., the Saturdays of the four ember weeks, the Saturday before Passion Sunday, and Holy Saturday. But for a grave reason the bishop may confer major orders on any Sunday or holyday of obligation. This does not include suppressed holydays (Code Comm. May 15, 1936; *Acta* XXVIII, 210).

§2. Place of Ordination (c. 1009)

General ordinations should, as a rule, be held in the cathedral church, and in the presence of the cathedral canons.

Ordinations which are held outside of the general ordination seasons *{extra tempora)* may be conducted in any church, in the chapel of the episcopal residence, or in the chapel of the seminar}· or of a religious house.

First tonsure and minor orders may be given in a private oratory.

S3. Registration of Ordination (c. 1010-1011)

The names *of* each candidate ordained, and of the ordaining minister, together with the date and place of ordination, must be recorded in a special ordination register to be kept in the Curia.

The name of each candidate promoted to the subdiaconate must be sent to the pastor of the parish where the man was baptized. The duty of transmitting this information rests upon the local Ordinary, unless the candidate belonged to an exempt religion in which case the duty lies with the major superior. The pastor must enter the fact of subdcaconship on the margin of the page of the baptismal register where the subdeacon's name appears. The object of this legislation is to forestall a possible future invalid marriage. Since major orders constitute a diriment impediment to marriage, should a marriage later be attempted by a cleric in major orders, this could not be done *coram Ecclesia,* since no priest may perform a marriage ceremony in the Church without first obtaining the baptismal certificate of the contracting party. In the case here contemplated, it would appear from the man's baptismal certificate, provided this were properly drafted, that the man had received major orders, and is now debarred from contracting a valid marriage.

Chapter VIII

MATRIMONY

Canon law, to most of those who must deal with it, means marriage law. It is the one subject in the whole field of church law which confronts parish priests and chancery officials more frequently than any other. Probably inorc than eighty percent of the chancery's time and work is concerned with marriage cases.

Because of its importance and daily application we shall give this subject more detailed consideration than any other in our manual. For that reason the present chapter will upon analysis prove to be the longest chapter in this book.

We believe it will benefit the reader if we list for him a good deal of supplementary reading material as we go along. At this place wc confine ourselves to literature of only the most comprehensive nature.

Source Material

The Code of Canon Law (cc. 1012-1143).

Codex Juris Canonici Tontes (cfr. p. 21, 40).

Index of the Code for cross references and parallel places.

Faculties of the Apostolic Delegate and American Bishops (723Λ).

Diocesan statutes for particular legislation and delegated faculties.

General Reference Works

Manuals of *dogmatic* theology in the treatise *De Sacramentis.*

Manuals of *moral* theology in the treatise *De Matrimonio.*

The Catholic Encyclopedia for historical and doctrinal material.

All general commentaries on the Code (cfr. p. 44).

Cappello, Felix, *De Matrimonio,* Rome: Marietti, 1938.

Ayrinhac, H. A., *Marriage Legislation in the New Code of Canon Law,* New York: Benzinger Bros., 1946.

Petrovits, Joseph, *The New Church Law on Matrimony,* Philadelphia: McVey, 1927.
Nau, Louis, *Manual of the Marriage Laws of the Code,* New York: Pustet, 1933.
Joice, George, *Christian Marriage,* New York: Ward and Shced, 1933 (mostly historical and doctrinal).
Alford, Culver B., *Jus Matrimoniale Comparatum,* Rome, 1938.
Ramstein, Matthew, *The Pastor and Marriage Cases,* New York: Benzinger, 1945.

In separate articles we shall now consider each of the following points: (1) the nature of marriage; (2) the canonical preliminaries to marriage; (3) marriage impediments in general; (4) marriage impediments in particular; (5) the marriage consent; (6) the solemnization of marriage; (7) the separation of the spouses; (8) the validation of marriage.

ART. I

Nature of Marriage

Under this heading wc shall consider : (1) marriage as a contract; (2) marriage as a sacrament; (3) the social control over marriage; (4) the various kinds of marriages; (5) the presumption of validity enjoyed by all marriages; (6) betrothals as distinct from the marriage contract.

§1. Marriage as a Contract

Between Christians, i.e., baptised persons, marriage is both a contract and a sacrament. The union is called *marriage* when the natural law contract is stressed ; it is called *matrimony* when its hoi}· or sacramental character is emphasized.

Understood as a contract marriage may be defined as: *a contract between man and woman through which each party confers upon the other the perpetual and exclusive rights to their bodies with respect to acts which of their very nature tend to the procreation of offspring.*

In this definition we find included: (1) the ends and aims of marriage; (2) its characteristic properties.

The *primary end,* or object, of marriage is the procreation and the rearing of children. The *secondary* ends are mutual help, companionship and the allaying of passion (c. 1013, §1).

The characteristic *properties* which distinguish the marriage contract from every other human contract are unity and indissollubility (c. 1013, §2). *Unity* means that marriage can take place, and exist, only between one man and one woman. It excludes a plurality of parties, which is not true of other kinds of contracts. It means that a man cannot have several wives, nor a woman several husbands. *Indissolubility* means that the contract cannot be broken at the will, or with the consent, of the contracting parties, as is usually true of other contracts, but only through death of one of the spouses.

That some such contract as here defined and described, no matter by what name it be called, is demanded by the law of nature, or rather the nature of man, in order to regulate sexual acts and conduct for the benefit of the offspring, and society as a whole can only be assumed at this place, and we refer the reader to manuals of moral philosophy and dogmatic theology for proof of this proposition so basic to the legislation to be considered, the one drawing its proof mostly from the universal experience of mankind, the other from the revealed word of God.

§2. Marriage as a Sacrament

Marriage between Christians, i.e., baptised persons, besides being a contract is also a sacrament. Canon 1012 recalls the teaching of the Church on this point when it states that Christ, the Lord, raised the natural contract of marriage between baptised persons to the dignity of a sacrament.

Considered as a sacrament marriage, or matrimony, may be defined as: *a sacrament of the New Law instituted by Christ, the Lord, which confers special sanctifying grace upon the contracting parties the better to enable the spouses to discharge the duties and burdens of the married state.*

As it does not belong to canon law to prove that marriage as a contract is postulated by the law of nature, neither is it necessary that we prove at this place that by divine positive, or revealed, law marriage between Christians is a sacrament. We refer the reader to manuals of dogmatic theology for such proof. Cfr. also the papal encyclical *Casti Connubii* of Pius XI *(Acta,* 1929, 539).

It should be noted that canon law deals with marriage under both aspects: as a contract and as a sacrament. The Church is concerned mostly with Christian marriage, although if an infidel wishes to marry a Catholic, especially if the former is divorced and still has a living spouse from the first marriage, the question of

infidel marriages becomes the concern of pastors and the courts of the Church.

§3. Social Control Over Marriage

Marriage of baptised persons is governed not only by divine law (natural and revealed), but also by ecclesiastical law, saving the competency of the civil authorities with regard to the purely civil effects of Christian marriage (c. 1016).

The right of the Church to legislate for Christian marriage, and to judge the validity of marriage contracts between baptised persons, is an exclusive right to which the State cannot be a partner. To the Church alone did the Saviour entrust the sacraments for reverential administration and reception. The claim of certain Catholic rulers of former times to joint jurisdiction with the Chdrch in this matter cannot be defended. That claim rested upon the supposition that the State had jurisdiction so far as the natural contract was involved, while the Church had authority insofar as the contract was a sacrament. But Catholic theology teaches that the contract and the sacrament cannot be separated; they are one and the same thing. This is evident from the fact that the contracting parties themselves, and they solely, were always considered the ministers of the sacrament, the presence of the priest when required (which was not always the case in past ages), being intended merely to establish proof that the spouses gave consent. The presence of the priest adds nothing to the matter or the form of the sacrament. The bodies of the spouses constitute the matter of the sacrament, and the words expressed in the contract represent the form of the sacrament. The matter and form of the sacrament, therefore, are simply found in the natural contract itself. 'I'he Lord Christ added nothing external to that contract; He merely *raised* the natural contract to the dignity of a sacrament.

But the State is competent with regard to the merely civil effects of Christian marriage, such as questions of dowry, and the right to succeed to the conjugal and parental estate. Further than these effects it cannot go. The civil authority cannot before God establish impediments for Christians. Nor can it call Christians to its courts to pass judgment on the validity of their marriage. This is true even though both parties take their case to the civil court of their own accord. The reason is that such questions belong to the very essence of the marriage contract over which the Church has now exclusive control by reason of its sacramental nature between baptised persons.

But the State alone, and everywhere, rightfully controls the marriage contract between unbaptised persons, technically called *infidels*. The reason is that the Church has no jurisdiction over infidels; they are not baptised, and only through baptism docs one become a member and subject of the Church. Yet because there must be some social control over the marriage of unbaptised persons, this will be the State. Unbaptised persons, therefore, are held to the marriage impediments established by civil law. This statement assumes practical importance when the Church court is called upon to adjudicate the validity of a marriage contracted by two unbaptised persons. In the event one becomes a convert and wishes to marry a Catholic, the Pauline Privilege can apply. But if there has been no conversion, and a Catholic has married one of the divorced infidels civilly, and now repents and wants the marriage rectified by the Church, declaring his spouse's first union invalid because of an impediment of civil law, State control over infidel marriages becomes practical.

While in truth the Church alone may rightfully legislate for the marriage of her baptised subjects, yet in practice, especially in countries like our own where Church and State are separated, the civil law gives no recognition to that claim, and proceeds to legislate for the marriages of all citizens, whether baptised or unbaptised. In order to avoid difficulties with the civil law and the courts, both the priest and the spouses must keep civil legislation in mind. This they will do, of course, for reasons of expediency, not because they consider civil law as binding in conscience in the present case. For if Catholics contract a marriage which is forbidden by civil law, the secular court will not give recognition and protection to their union. To cite a frequent and familiar instance: if the Church court declares a Catholic free to marry again because of some canonical invalidating impediment to the first marriage. or because the marriage was contracted outside of church, the Catholic so freed by church declaration will make sure to obtain a civil divorce from the bonds of his first marriage before entering a new marital union, else he will be charged with bigamy under the civil law, and the officiating priest will be held an accomplice to the crime. The civil law does not consider the first marriage invalid because not contracted in due canonical form, provided consent was expressed before an authorized civil official, or minister of religion.

We may ask ourselves who controls the marriage contract between Protestants? The answer is that if both Protestants arc baptised, their marriage is regulated by the laws of the Catholic

Church, saving where the Code expressly exempts Protestants, namely, from the impediment of disparity of cult, and from the law requiring marriage before the priest. Otherwise, they are held to the Church law, not to civil law, for being baptised, as supposed, they arc subjects of the Church of Christ, *of* which there is only one lawful representative on earth. If both arc unbaptised at the time of the marriage, their marriage is governed solely by the civil law. If one is baptised and the other unbaptised, the former will he held to canon law; the latter probably to civil law, although this is a much disputed question, and is a source *of* perplexity for Church courts when called upon to judge the validity of a union between a baptised non-Catholic and an unbaptised person, one of whom married a Catholic, or desires to, and prays the court to look into the validity of the first marriage on the ground of an invalidating impediment of civil law. We suppose the divorced person not a convert so that the Privilege of the Faith, hereinafter to be described, could be applied.

§4. Various Kinds of Marriage

(c. 1015)

We have seen that some marriages are Christian and some are not; that some can i>e valid and others invalid. Some also are consummated and others not. Canon 1015 lays down the terminology· employed throughout by the Code to designate these various kinds of marriages.

A *matrimonium ratum* is a marriage contracted between two baptised persons. In English we speak of such marriage either as a *Christian* marriage, or as a *sacramental* marriage.

A *matrimonium ratum et consummatum* is a sacramental marriage which has been consummated through natural intercourse. We may call it a sacramental consummated marriage.

A matrimonium ratum et non consummatum is a sacramental marriage which has not been consummated.

The distinction between a sacramental consummated and unconsummated marriage is vital because it lies within the power of the Pope, as we shall see, to dissolve the latter but not the former marriages. Of course, non-consummation must be proved, for once a marriage is contracted, the law presumes it was consummated.

A *matrimonium legitimum* is any valid marriage between two unbaptised persons. Very likely the term applies likewise to a valid marriage between a baptised and an unbaptised person, for these unions are not sacraments, as we shall see.

A *putatife* marriage is an invalid marriage, but contracted in good faith by at least one of the parties, and it remains putative as long as both parties are not conscious that the marriage is invalid. The only difference between ordinary invalid marriages and putative marriages lies in the principle that due to the ignorance of one or both parties concerning the impediment which invalidated their marriage, and therefore due to the absence of malice on their part, the Church regards the children born of such putative unions as legitimate.

Otherwise, it is only a valid marriage, whether sacramental or legitimate, that can give rise to real marital and parental rights and duties (c. 1110). It is valid marriage alone that confers the status of husband and wife, and the legitimacy of offspring.

Concerning *legitimacy* in particular, the Code treats this question in cc. 1114-1117. And ev.cn though civil law presumes to determine these questions even for baptised persons so that to avoid greater evils Catholics will abide by the civil law in this matter, yet the Church has her own rulings and enforces them so far as possible in the sense that the question of legitimacy in the canonical meaning may arise and find application in more than one situation, e.g., appointment to certain ecclesiastical offices, in candidates for the priesthood, etc.

In canon law those children arc to be considered legitimate who are born of a valid or putative marriage, unless the parents were forbidden the use of marriage at the time of the child's conception because the father was under sacred orders, or either parent was under solemn religious vows (c. 1114). It should be remembered that married men can receive sacred orders by Apostolic permission, and both married men and women can embrace the religious state by the same permission.

In a case of doubt as to the child's paternity, unless contrary arguments are in evidence, the father is presumed to be the man who married the child's mother (c. 1115, §1). Contrary and evident proof is naturally present if the child is born more than a year after its real father's death. In this connection the Code rules that those children arc presumed to be legitimate who are born at least six months after the wedding day, or within ten months after the marriage has been dissolved, no matter for what cause (c. 1115, §2).

Children born of an invalid marriage (excluding putative marriage), arc legitimated by the subsequent marriage of the parents, provided the parents were qualified to marry if they had so wished, at any time from the child's conception to its birth (c. 1116). If during

all this time they labored under some diriment impediment, subsequent marriage does not legitimate the child, but an Apostolic dispensation would be necessary.

Unless the law states otherwise, legitimated children are on a legal par with legitimate children (c. 1117).

§5. Marriage Enjoys the Favor of the Law

This principle is stated in c. 1014, and it means that every marriage must be upheld as valid in a case of doubt until its invalidity is proved for certain.

To this principle there are two exceptions: (1) a marriage contracted by a Catholic in disregard of the canonical form, e.g., before a justice of the peace, is not presumed to be valid for it has not even the appearance of a valid marriage; (2) when the validity of the former marriage of a convert is seriously questioned and the marriage would stand in the way of the convert's contracting a new marriage with a Catholic, and thus would render conversion difficult, the former marriage is to be presumed invalid. We shall see more about this when we speak of the Pauline Privilege.

§6. Betrothals

Betrothals, or marriage engagements, resemble marriage insofar as they are contracts and are concerned with marriage. However the one is merely the promise to contract marriage, and the other is the actual marriage contract so promised.

In those countries where the Church's exclusive control over Christian marriage is recognized, the State also leaves it to the Church to regulate the betrothal contract. In general the law on this matter may be summarized by saying that betrothals to be valid must be put into writing and signed by the contracting parties and also by the pastor, or by the local Ordinary, or by two witnesses (c. 1017).

In the United States it is not the practice to conclude formal marriage engagements. If the parties wish to make a formal engagement, it would be better if they observed the civil law on contracts, for the church court would be powerless to enforce a formal engagement save by means of censures. It suffices in practise that Catholics sign an engagement before two witnesses. If then either party recedes from the contract, he may be sued in civil court for breach of promise. However, neither the civil nor the church court will enforce even a formal engagement to the extent of compelling the culpable party to contract the marriage he promised.

The reason for this ruling lies in public policy. It is better that the innocent party suffer a momentary hardship involved in the breaking off of the engagement by the other than enter upon a lasting union that might prove unhappy. But the civil court will award damages if any were caused ; c. g., if the girl quit her employment to prepare for the wedding; if the man bought or furnished a home, etc.

As to the purely ethical or moral obligation in conscience to keep engagements, both formal and informal, the reader is referred to manuals of moral theology which also explain the reasons that justify the breaking off of an engagement.

We may add that on June 2-3, 1918, the Code Comm. *{Acta* X, 345) declared that a contemplated marriage with a third party cannot be held up to await legal action for breach of promise by reason of a former engagement. Breach of promise suits can be heard by either the ecclesiastical or the civil court.

Books of Special Reference

Goldsmith, J. W., *The Competence of Church and State over Marriage,* C. U. Press, 1944.

McDevitt, Gilbert J., *Legitimacy and Legitimation,* C. U. Press. 1941.

Articles and Consultations

Affinity among the unbaptized, HPR. 1926, Oct. 70; 1924 Jan. 394-398.

Arc civil laws valid which bar marriage to vcncrially infected persons? ER. 1938 Jan. 99; Dec. 507-518; 1939 Apr. 323-334; May 445-446; July 9-30; 1940 July 27-59.

Marriage with sister in infidelity, HPR. 1927, Sept. 1324-1331.

Are pagans bound by impediments? HPR. 1922 Dec. 279.

To which impediments arc Protestants subject? HPR. 1924 Apr. 729-731.

Are State laws forbidding marriage between first cousins binding in conscience? CST IV, 12.

Do informal betrothals bind in conscience? CST. II, 124; ER. 1925 Oct. 385-391 ; Nov. 432; 1926 Jan. 86; HPR. 1925 Oct. 70-74.

An engagement casus, HPR. 1921 Mar. 540-543.

Can alimony be demanded in conscience from an unlawful husband? HPR. 1933, May 859; 1935, Sept. 1309.

Legitimatizing illegitimates, ER. 1920, Nov. 504-507.

The philosophy of legitimacy, Jurist, 1943, Jan. 64-116.

ART. III

Preliminaries to marriage.

These preliminaries may be reduced to three headings: 1) the investigation concerning the freedom of the parties to marry; 2) pre-nuptial instructions; 3) consultation with the Ordinary in cases where the law requires this.

§1. Investigation Concerning Marital Freedom

The better to enforce her laws, the Church requires the presence of an authorized priest at every Catholic marriage, who also must at a proper time beforehand investigate whether the parties are free from canonical impediments (c. 1019, SI). This investigation will differ according to whether a marriage is being contracted in danger of death or not.

In danger of death, if time does not permit a more thorough investigation, it suffices that the parties take an oath that they are baptized and are free from impediments (c. 1019, §2).

Most cases of this kind arc where a Catholic has been living in only a civil law union, and has put off having the marriage blessed by the Church either through shame, indifference, or some other cause. Any priest may marry a Catholic in danger of death, and dispense from nearly all impediments of ecclesiastical law, as we shall see.

Sometimes, however, the impediment is one of divine law, or at least its presence is probable, as where the party contracted a civil marriage after having obtained a civil divorce from the bonds of a former valid marriage, ami the former spouse is still alive. Here the priest can do nothing except to absolve the person in danger of death on the promise that if he recovers he will separate from his unlawful consort. And if it is not certain whether the other is still alive, the priest will again abstain from validating the present union, but will absolve the penitent on condition that if he recovers he will submit his marriage to the church authorities for examination.

Outside of danger of death, i. e., in ordinary cases, the sworn statement of the intended spouses does not suffice to establish their freedom. A more involved procedure is called for, comprising: 1) the interrogation of the spouses; 2) the gathering of necessary documents; 3) the publication of the banns.

A. Interrogation of the Parties (c. 1020)

This is usually gone through when the couple come to the parish house and announce their intention to get married, to arrange for the date, etc. The chief purpose of the interrogations is naturally to discover whether the parties are free from canonical impediments, to be discussed later in greater detail.

In questioning the parties the pastor, or his delegate, will employ forms or questionnaires authorized by the local Ordinary (chancery). These forms will be based mainly on those appended to the Instruction of the S. C. Sacr. of June 29, 1941 *(Icta,* XXXIII, 297 *$q.*

The first question is logically the one concerning their residence, unless the parties arc well known to the priest as his parishioners. For if they arc not his subjects the priest will have to refer them to their proper pastor, or obtain permission of the proper pastor to marry them. Thereafter, he may proceed to interrogate them, as just said.

B. Documents

Besides interrogating the parties the priest must personally or through them obtain certain documents, the better to establish their freedom.

The most important document is the baptismal certificate. This not only proves baptism and that the parties are subject to canonical regulations, but it also indicates the presence or absence of certain marriage impediments, namely: major orders, the solemn vow of chastity taken in a religion, and the impediment of the bond. These three facts must be recorded on the margin of the baptismal register where the name of the baptized person appears whom they concern. And the priest when investigating his own baptismal register, or drafting a certificate for another pastor, will be.careful to mark or record any such marginal notes.

Incidentally, the baptismal certificate, or register, can also throw light on other possible impediments: disparity of cult, consanguinity, affinity, spiritual relationship, and nonage.

If one party claims to be unbaptized, a dispensation must be obtained from the impediment of disparity of cult, and in that case the baptisriial certificate is required of the Catholic party only. But if one claims to have been baptized in a non-Catholic sect so that a dispensation is necessary from the impediment of mixed religion, canon 1021, §1 would require the certificate even of him.

But in practise, at least in the United States, there seems to be little point in stressing this law. Often the non-Catholic baptismal certificate is hard to secure. But apart from that consideration since in cases of this kind a dispensation is usually granted from disparity of cult *ad cautelam* even when the Protestant baptismal certificate is at hand, the certificate seems to serve no purpose. The law is practical in those Catholic countries where the bishops do not have faculties to dispense from disparity of cult, but from mixed religion at the most. Then the Protestant baptismal certificate will prove that no disparity of cult is present but only mixed religion. However, each priest must follow the practise of his local curia on this point.

In addition to the baptismal certificate, a widow or widower must produce a certificate of the former spouse's death, unless the record is in the present parish books.

Other documents, required in virtue mostly of diocesan 'law, are affidavits from parents, close relatives or other competent persons if the intended spouses are minor children, or cannot produce their baptismal certificate, or have lived elsewhere for more than six months after attaining puberty. But the Ordinary may permit in this last case that the party concerned take an oath to his freedom (c. 1023, §2; Code Comm., *Acta,* 1918, 345).

In the case of a divorced person whose former spouse is still alive, the priest cannot go ahead with the investigation until the diocesan court or chancery issues a declaration of freedom, which may take from a few weeks to a year or more (cfr. Bk. IV of this manual).

C. Publication of the Banns

The further to insure the validity of a contemplated marriage the law requires that the marriage be publicly announced in the parish church on three successive Sundays or holydays of obligation (c. 1022, 1024). The local Ordinary may permit that in place of these oral banns, the names of the parties be affixed to the church doors to be kept there for the space of eight days (c. 1025). That the banns may serve their purpose, c. 1027 imposes upon the faithful the duty of notifying the pastor of any impediments which they know to exist between the prospective spouses.

The banns must be announced by the proper pastor, i. e., the pastor in whose parish the parties have a domicile or quasi-domicile. And if the parties belong to different parishes, the banns must be published in both parishes (c. 1023).

Since the Church is opposed in principle to marriages between

Catholic» and non-Catholics, the Code forbids that the banns of such marriages be announced lest the faithful take scandal and become in time lethargic to her prohibitions (c. 1026).

For a just cause the local Ordinary may dispense from the banns in particular cases. He may dispense from their publication both in his own diocese and in any other diocese where they would have had to be announced. Competent to dispense is any proper Ordinary of the parties provided the marriage takes place in the diocese of the dispensing Ordinary. However, if the marriage takes place outside of the dioceses of all the proper Ordinaries, then any one of the proper Ordinaries can dispense (c. 1028).

Among the reasons which justify a dispensation from the banns may be listed: the fact that the parties arc already considered married and desire now to validate their union *(validatio matrimonii)* : or the woman is pregnant *(praegnantia mulieris)* ; or some bann was overlooked and time is urgent *(hannum praetermissum et tempus urget);* or unexpected business, military and other reasons necessitate a hurried departure and wedding; or the parties simply desire a quiet wedding and the pastor is well enough acquainted with them to know they have no impediments (cfr. Cappello, *De Sacramentis,* III, n. 168).

If the marriage is postponed for six or more months following the publication of the banns, the Ordinary may require their repetition or not, as seems best to him (c. 1030, §2).

The pastor should not proceed with the publication of the banns if an impediment is present, unless he is morally certain that a dispensation from the impediment can and will be granted. If an impediment is detected during the process of the publications, these should not be interrupted lest the good name of the parties be impaired, but the pastor should finish the announcements in the usual way, and request a dispensation from the impediment if a dispensation is possible (c. 1031).

§2. PRE-NUPTIAL INSTRUCTIONS

Before he marries them the pastor must instruct the* parties in the fundamentals of Christian doctrine if he finds them ignorant of the same (c. 1020, §2). But should they refuse to be bothered with instructions, he cannot for that reason alone denv his assistance at their marriage (Code Comm., June 2-3, 1918: zf*da* X, 345). The parties need not be asked whether they know enough Christian doctrine. From their general address and manner of speech the pastor can judge this. In the United States native born Catholics will generally need no such religious instructions.

However, in all cases the pastor or his delegate will instruct the nupturients concerning the sacramental nature of marriage, and the moral rights and duties of the spouses toward each other and toward the children (c. 1033).

Before a mixed marriage is contracted, and in virtue of diocesan law, a number of instructions must be given to the non-Catholic. The object of these instructions, usually six in number, is not to force conversion to the faith, but rather to acquaint the non-Catholic concerning Catholic practises, such as Sunday .Mass, fasts, confession and communion, the Church's teaching on birth control, on divorce, Christian education of youth, etc. The non-Catholic will be obliged to sign a promise to the effect that he will leave the Catholic spouse free in the exercise of the Catholic religion, and that he will not oppose the Catholic education and upbringing of the children. Such a promise he cannot make in all sincerity without first understanding what the exercise of the Catholic religion implies.

Catholics should he admonished to confess their sins, and to receive communion before or on the wedding day, since matrimony is a sacrament of the living and should he received in the state of grace (c. 1033). This admonition is part of the pre-marital instruction.

§3. Consulting the Ordinary

If time permits, no priest may assist at a marriage in the following cases without first consulting his local Ordinary (usually the chancery office): (1) if *vagi* arc to be married (c. 1032); (2) if minor children contemplate marriage without the consent or knowledge of their parents (c. 1034); (3) in case of notorious apostates, or members of condemned societies (c. 1065, §2) ; (4) if public sinners or notoriously censured persons refuse first to confess their sins (c. 1066) ; (5) if the parties arc determined to be remarried later by a non-Catholic minister (c. 1063, §2) ; (6) if it is a marriage of conscience (c. 1104); (6) if the marriage is to take place in a private home, or in the chapel of a seminary, or of a religious house of women (c. 1109, §2) ; if a previous marriage has been contracted and the former spouse is still alive (c. 1069, §2).

Books of Special Reference

Donovan, James J., *The Pastor's Obligation in Pre-nuptial Investigation,* C. U. Press, 1940.

Roberts, James B., *The Banns of Marriage,* C. U. Press, 1931.

Rice, Patrick. W., *Proof of Death in Pre-nuptial Investigation,* C. U. Press, 1940.

Alford, Culver B, *Jus Matrimoniale Comparatum,* Rome; i-es.

O'Brien, John A., *Natural Birth Control.*

Couckc-Walsh, *The Sterile Period in Family Life,* New York; Wagner, 1933.

Ostheimer, A. L., *Instructions for Non-Catholics Before Marriage, Philadelphia;* Dolphin Press, 1939.

Articles and Consultations

Preliminary arrangements *for* marriage, ER. 1926 May, 489-495.

The 1941 Instruction on pre-nuptial investigations, ER. 1943 Jan. 14-22; Feb. 93-95.

Banns for a convert, ER. 1918 Apr. 434; 1930 May, 507.

Banns on the occasion of applying the Pauline Privilege, ER. 1929 Apr. 421.

Announcing the banns during Forty Hours on a week day, ER. 1941 Mar. 279.

Banns required per sc even before validating a marriage, ER. 1946, Jan. 73.

Pastors cannot decide invalidity of former marriages, ER. 1921 July, 59-62; 1934, Aug. 186-190; 1941, Nov. 413-414.

If pastor thinks marriage might prove unhappy one he can consult the Ordinary, HPR., 1937, June 856.

Counselling sterilization for a prospective husband, HPR. 1927, Nov. 196-202.

Indiscriminate dissemination of the rhythm theory, ER. 1940, Feb. 164.

Is the reception of the sacraments preceptive before marriage? HPR. 1930 Mar. 629; 1933, May 856.

Performs marriage for Catholic unwilling to confess, CST., I, 290.

Can the pastor advise a merely civil marriage? HPR. 1930 Nov., 187-189.

ART. III

Impediments in General

Canon 1035 lays down the general principle that all· persons may contract marriage who are not forbidden by law to do so. This prohibition to contract marriage is called an impediment.

The Code first speaks of impediments in general before considering impediments in particular. In this article, therefore, we shall consider: (1) the nature of marriage impediments; (2) their various general classes or categories; (3) who can establish impediments; (4) who can remove them; (5) the manner of petitioning dispensations.

§1. Nature of Marriage Impediments

A marriage impediment is in the nature of a prohibition. It may be defined as: *an obstacle established by divine or ecclesiastical law which hinders certain classes of persons from contracting either a valid or a licit marriage.*

Since marriage between baptised persons is at the same time a sacrament, the Church must safeguard the sanctity of holy matrimony. This she docs not only by determining where, and when, and in what form of solemnity it will be celebrated, but above all by specifying who are the valid and licit subjects of the sacrament.

However, in determining the subject of the sacrament the Church docs not overlook the fact that Christian marriage is essentially a contract, and carries with it, besides, many social implications. Hence, as in the case of sacred ordination, mere worthiness or spirituality alone does not qualify all individuals to receive this sacrament.

Again, because Christian marriage is a contract, besides being a sacrament, it follows that no matter how worthy and otherwise qualified one of the spouses may be, he receives neither the sacrament nor contracts marriage, if the other is held by an impediment, though it affects him alone, e.g., the impediment of nonage. The reason is that a contract cannot limp, as it were (c. 1036, §3).

§2. Impediments Classified

Some marriage impediments are impedient, others diriment; some are public, others occult; some are of major, others of minor degree ; some are of divine, others of ecclesiastical law.

An *impedient* impediment simply forbids a marriage under pain of sin, but docs not invalidate the contract. A *diriment* impediment, on the other hand, both forbids that a marriage be contracted, and if contracted renders it null and void. The latter can also be called an invalidating impediment (c. 1036, §1, 2).

A *public* impediment is one which can be proved in the external forum; otherwise it is *occult* (c. 1037). Let it be noted that the Code Comm, in answer to a doubt in reference to this

matter replied that a marriage impediment is public if the circumstances from which it arises are public *(Acta,* 1932, 248). This hardly improves the definition contained in c. 1037, namely, that an impediment is public which can be proved in the external forum. Facts are proved in the external forum, in the generality of eases, either by means of an authentic document, or by two competent and trustworthy witnesses. In this sense practically all canonical impediments arc public by their nature as will appear to anyone who analyzes them from this viewpoint. To the class of impediments occult by their very nature belong private vows, crime arising from adultery or conjugicide, and occult consanguinity arising from illicit intercourse. If such facts later become known it is *per accidens.*

The distinction between public and occult impediments is made for this reason that dispensations from the former must always be recorded. Therefore, confessors can never dispense from them because the knowledge they receive through sacramental confession must forever remain secret. This is true even in danger of death and in urgent eases outside of danger of death.

But an impediment may be public in nature and occult in fact. It is then called an *occult case.* The impediment need not be of an incriminating nature to be occult in fact. The impediment for some reason or other simply docs not happen to be divulged ; it is not a matter of common knowledge in the locality. We shall have more to say about occult eases presently in connection with dispensations.

Impediments of *minor* degree arc: (1) consanguinity in the third degree of the collateral line; (2) affinity in the second degree of the collateral line; (3) public honesty in the second degree; (4) spiritual relationship; (5) crime arising from adultery. All other impediments are of *major* degree (c. 1042).

The distinction here mentioned finds its sole application in C. 1054 which states that a dispensation from an impediment of minor degree is valid even though falsehoods were stated and truths were withheld in the petition, and even though the only motive offered by the petitioner was false.

An impediment of *divine* law is one which has God for its author; an impediment of *ecclesiastical* law is one which has the Church for its author. Divine law impediments, in turn, proceed either from the natural law, e.g., itnpotency, lack of consent, or from the revealed law, e.g., marriage *of* a Catholic with a non-Catholic if there is danger of perversion to the former.

From impediments of the divine law the Church cannot dispense. But from all impediments of ecclesiastical law she can dispense. She can modify all such impediments, and even abrogate them. Thus, the Code abrogated certain impediments that existed under the former law, notably disparity of cult for baptised non-Catholics.

§3. Enactment of Impediments

Only the supreme authority in the Church can interpret divine law marriage impediments, e.g, how far the divine law prohibits divorce and remarriage during the lifetime of a former spouse (c. 1038, §1).

Again, only the same supreme authority can establish, modify and repeal impediments of ecclesiastical law (c. 1038, §2; 1040). In virtue of this wise ruling there is a uniform marriage law throughout the universal Church, and church courts when called upon to adjudicate marriage cases need consult, and be guided by, but one Code. Thus, confusion such as we see in the civil legislation of our own country is avoided, a confusion arising from the fact that each State exercises sovereignty in the matter of its marriage laws. The Code, further to insure uniformity in marriage impediments, rules in c. 1041 that no custom can introduce, modify or abolish an impediment.

Therefore, local Ordinaries can establish no impediments, neither impedient nor diriment. At the most they can ban some marriages within their territory, but the ban must be of a temporary nature, and it cannot affect the validity of a marriage contracted in contravention thereof (c. 1039). Thus, it seems, that diocesan statutes could order church weddings held up, say for six months, in the case of Catholics who had contracted civil marriage and now ask that their marriage be validated, and this as an act of penance for the scandal they gave, the parties during this interim being ordered to separate.

§4. Manner of Granting Dispensations

We have pointed out the advantage of a uniform marriage law. However, such uniformity is not an unmixed blessing. There is a disadvantage here in the sense that canon law is world-wide, and needs to be modified constantly in view of the varying needs, and social habits existing in different countries. Thus, while the prohibition against mixed marriages can be easily enforced in countries almost entirely Catholic, the same law, if enforced with

equal rigor in a country like ours, where non-Catholics far outnumber Catholics, could work a great hardship in many cases where a Catholic could not find a partner in marriage save a non-Catholic. To remedy such drawbacks inherent in uniformity of legislation we have the necessary system of dispensations.

As the law contained in the Code proceeds from the Roman Pontiff, only he can by original right dispense from marriage impediments. But he may, and does, delegate his dispensing power to others, both for ordinary cases, and even more so for cases of emergency.

A. Dispensing Power in Ordinary Cases

By an ordinary case we are to understand any marriage which is contracted neither in danger of death, nor outside of such danger but under urgent circumstances where everything is prepared for the wedding and an impediment is discovered at the last moment, for both of which urgent cases broader dispensing powers arc conferred, as we shall see.

In ordinary cases, then, priests cannot dispense from marriage impediments, but only the local Ordinary. And his powers to dispense are limited usually to those granted him by c. 81 and in his quinquennial faculties (724, 728).

B. Dispensing Power in Urgent Cases

These cases are of two kinds: (1) urgent cases in danger of death; (2) urgent cases outside of danger of death.

(1) *Urgent Cases in Danger of Death*

We shall distinguish between the power of local Ordinaries and the power of all other clerics.

Dispensing power of local Ordinaries— In urgent danger of death local Ordinaries can dispense from all impediments of ecclesiastical law, whether public or occult, excepting two: (1) the impediment of the priesthood; (2) the impediment of affinity in the direct line arising from a consummated marriage. They can dispense even from the need of witnesses, i.e., the canonical form.

No canonical cause for the dispensation is required other than that relief of conscience is sought, or children are to be legitimated.

In mixed marriages the usual promises are to be made, although it is probable that oral promises alone suffice, (cfr. c. 1043).

Dispensing power of priests— All priests have the same dispensing powers in danger of death as has the local Ordinary just described, provided:

(1) They are otherwise authorized to assist at the marriage;

(2) The local Ordinary cannot be reached for a dispensation (c. 1044).

.According to the Code Comm. (Nov. 12, 1922; *Acta* XIV, 662), the Ordinary is to be considered beyond reach if he can be reached only by telegraph or telephone.

C. 1046 requires the priest to notify the Ordinary of the dispensation he may have granted for the *external* forum, and that he record it in the marriage register of his own church.

A confessor who hears the confession of a person in danger *of* death, and who does not himself assist at the marriage (a rare contingency), may dispense only from impediments occult by their nature. If he also marries the penitent, his powers outside of confession extend to impediments by their nature public.

(2) *Urgent Cases Outside of Danger of Death*

Canon 1043 contemplates only one situation, namely, when all things have been prepared for the wedding, and the marriage cannot be postponed without probable danger of grave harm until a dispensation is received from the Holy Sec, and an impediment is discovered in this situation. It is immaterial if the spouses knew of the impediment all the while (Code Comm., Mar. 1, 1921; *Acta* XIII, 348).

Dispensing power of local Ordinaries— In the case just described local Ordinaries have the same dispensing powers as they have in danger of death, except that they cannot dispense with the canonical form of marriage as they could in danger of death. It is naturally difficult to see how, outside of danger of death, there would be need of dispensing with an authorized priest or two witnesses. Note, however, that in virtue of c. 81 bishops can dispense apart from imminence of wedding if the case is urgent (Code Comm. July 27, 1942; *Acta* XXXIV, 241).

Dispensing power of priests— If the local Ordinary cannot be reached in the sense explained above, the priest who is authorized to assist at the marriage, can dispense to the same extent as the local Ordinary (c. 1045, §3).

Note well— In the present urgent case *confessors* as such can dispense only from impediments occult *by nature*. We say: *as such*.

•because if the confessor later assists at the marriage he has the same dispensing powers as other priests. And what arc those powers? We said they were the same as those enjoyed by the local Ordinary. All of which is true saving this important exception: priests can dispense only from *occult cases, if* they cannot reach the Ordinary. And what does c. 1045, §3 mean when it uses this term? '1'he Code Comm. *Acta,* XX, 61) stated that impediments which are public in nature but occult in fact are to be considered occult so far as the effects of this canon arc concerned. But if the impediment is public in its nature, the dispensation must be recorded in the marriage register on general principles.

How occult in fact must the impediment be to constitute an occult case? In prc-Code days authors defined an occult *offense* to be one which was not known to more than three persons in a village, four in a town, six in a small city, and eight in a large city. And while occult marriage cases arc not necessarily of an incriminating nature, yet the rule just stated may be taken as a safe norm even in the matter of marriage impediments in virtue of c. 18 which permits interpretation based upon parallel places. It does not change the case if the impediment, e.g., consanguinity, is public in some other locality, e.g., back home.

The Code grants a priest these broad powers even outside of danger of death in order to safeguard his good name as well as that of the spouses. If a wedding had to be held up because of a recently discovered impediment, until such time as the Ordinary could be reached in person or by means of a letter, there would be general talk, and the blame could be laid to the pastor for neglecting the proper investigation beforehand into the freedom of the parties to marry. If the pastor phoned in, he would again risk his good name. As to impediments public *in fact,* one cannot imagine such an impediment being concealed from the pastor until the last moment, especially if the banns were published.

§5. Manner of Petitioning Dispensations

Since it is more in conformity with canon law that marriage dispensations he requested and granted in writing, wc shall append below some typical forms that can be used for this purpose. But regardless of the nature of the impediment that is to be removed, certain general elements are true of all petitions as follows:

Every petition ought to mention: (I) the full names *of* both contracting parties; (2) their religion; (3) their parish; (4) the impediment(s) from which a dispensation is sought; (5) the *species*

infima in the ease of public honesty and crime; (6) whether in consanguinity, affinity or crime the impediment is simple or multiple; (7) a canonical reason.

Concerning canonical reasons what wc said under c. 84 (p. 119) should be borne in mind at this place. The Church docs not dispense from her laws without a justifiable reason. If a dispensation is granted by delegated power without a sufficient reason, the dispensation is invalid. And since dispensations arc granted only in favor of Catholics, it follows that in a mixed marriage the canonical reason offered must be true of the Catholic so that if *aetas superadulta* is alleged, since only the girl is allowed to offer this reason, the Catholic in a mixed marriage of this kind must be the bride.

The petition, while addressed to the bishop, is mailed to the chancery office. If the confessor is requesting a dispensation, he must give fictitious names: *Titius et Titia*. If despite this precaution there may yet be danger of violating the sacramental seal, recourse may be taken to the S. Penitentiary, or to the Apostolic Delegate, or, since time will generally be urgent, the confessor'can dispense from *occult impediment* himself, and no record of his act is kept.

Canonical causes for matrimonial dispensations — These are listed in */.S.S. X,* 291, of which we list those most frequently offered in practise:

(1) *Jngustia loci,* or the smallness of the town, because the *woman* cannot find a suitable husband of her own station save the present one in the case;

(2) *Jetas feminae superadulta,* i.c., a girl over 24 has difficulty in finding any husband other than the present man;

(3) *Paupertas viduae,* if the widow has three or more children, and she has found the man under impediment willing to marry her, since it is difficult to find husbands under such circumstances;

(4) *Periculum matrimonii coram ministro acatholico;*

(5) *Periculum matrimonii civilis;*

(6) *Revalidatio matrimonii* which was contracted outside of the Church, or is invalid for any other reason.

(7) *Praegnantia mulieris,* i.e., to safeguard the good name of the woman and to conceal the sinful relations which otherwise would be known to have taken place outside of marriage.

A dispensation granted for the impediment of consanguinity or affinity is valid even though an error occur in the petition or the grant concerning the degree of the impediment, provided the impediment which exists in fact is inferior or equal to the degree mentioned in the rescript (c. 1052).

Specimen Forms of Petitions for Marriage Dispensations

Petition

For Dispensations in Mixed Marriages

Your Excellency:

N. N., a Catholic of.....parish, wishing to contract marriage with (or, wishing to have the marriage validated—or, wishing to have the marriage rectified by a *sanatio in radice)* which was contracted at.....on..... in the presence of.....*(civil official, non-Catholic minister)* with N.N., baptised in the..... sect (or, unbaptized) humbly begs a dispensation from the impediment of mixed religion and disparity of cult *ad cautelam (or simply,* from disparity of cult).

The reasons are.....

(It is also desired that faculties to absolve from the reserved case of.....be granted to the priest who hears the said Catholic's confession.)

Enclosed are $..... alms.

Respectfully.....

Promises in Mixed Marriages

To Be Sent in Together with a Petition for a Dispensation from the Impediment.

I, the undersigned, not a member of the Catholic Church, wishing to contract marriage with..... a member of the Catholic Church, purpose to do so with the understanding that the marriage bond thus contracted is indissoluble except by death. And I promise on my word of honor:

1. That..... shall be permitted the free exercise of religion according to the Catholic belief;

2. That all children of cither sex to be born of this marriage shall be baptized and educated in the Catholic faith, even though should die first.

(Signature of non-Catholic)

I, the undersigned Catholic, wishing to contract marriage with ..... hereby promise that all children of cither sex born of this marriage shall be baptised and educated in the Catholic faith.

(Signature of Catholic)

We, the undersigned, hereby certify that we witnessed the signatures of the above parties in their presence, and in the presence of each other on this.....day of..... 19.....at.....

(Signature of Priest)

(Signature of additional witness)

In my judgment the contracting parties appear sincere, and there seems to be no danger of perversion.

(Signature of Priest)

Petition

For Dispensations from Impediments Other Than Mixed Religion or Disparity of Cult

Your Excellency:

N. N. of.....parish, and N. N. of..... parish, (or both of.....parish), humbly beg a dispensation from the impediment of.....in order to contract marriage (or in order to have their marriage validated).

The canonical reason(s) is (are).....

Enclosed please find $.....alms.

Respectfully,

Rev.....

In consanguinity and affinity cases add the genealogical tree:

N.N.....

(Common Stock)

1. N. N.....	1. N.N.....
2. N. N.....	2. N. N.....
3. N. N.....	3. N. N.....

Petition

For a *Sanatio in Radice*

Your Excellency:

N. N. of this parish was civilly married to N. N., a non-Catholic baptized in the.....sect (or unbaptized). N. N. is now repentant and wishes to have the marriage validated. But the non-Catholic does not believe in formal promises, nor in the necessity of renewing consent before the priest. However, he (she) is not opposed to the Catholic baptism and education of the children. Both parties love each other sincerely so that there is no danger or possibility of a divorce. Therefore, in the name of N. N., the Catholic, I beg that Your Excellency grant a *sanatio in radice* in this case, thereby removing the impediment of..... and dispensing from the law requiring renewal of consent. Enclosed arc the signed promises.

Respectfully,

Rev.....

Petition

For a Dispensation from the Banns

Your Excellency:

N. N. of, parish and N. N. of,

..... parish, (or N. N. and N. N. both of..... parish) humbly pray that Your Excellency grant them a dispensation from..... publication(s) of the banns. The reasons arc.....

Enclosed please find $..... alms.

Respectfully,
Rev.....

Books of Special Reference

Marbach, Joseph F., *Marriage Legislation for the Catholics of the Oriental Rites in the United States and Canada,* C. U. Press, 1946.

O'Mara, Wm. A., *Canonical Causes for Matrimonial Dispensations,* C. U. Press, 1935.

O'Keefe, Gerald M., *Matrimonial Dispensations, Powers of Bishops, Priests and Confessors,* C. U. Press, 1927.

Articles and Consultations

American civil legislation on marriage compared with Code law, Jurist 1946, Oct. 477-502.

Prohibiting a marriage *pro tempore,* ER. 1927, Nov. 525.

Can pastors delegate the powers of c. 1044, 1045? ER. 1943. Jan. 59-60.

A casus perplexus, HPR. 1923, Mar. 633; 1923, Sep. 1299; 1925, Aug. 1204-1207.

Can the pastor who discovers the impediment of the bond in confession assist at the marriage? HPR. 1923, June 973.

Confessor detects impediment of bond before the wedding, HPR. 1930, Feb. 518-519.

Absolving and dispensing power in danger of death, ER. 1931, Sept. 255-277.

Dispensing from affinity in the direct line, ER. 1925, Aug. 197-198; HPR. 1924, Mar. 619.

Marriage in danger of death witnessed by confessor, HPR. 1923, Sept. 1303.,

Delayed dispensation and validity of marriage, ER. 1920, Mar. 338-340.

Error in the marriage dispensation, ER. 1923, Nov. 536.

Arc dispensations by telephone valid? HPR. 1931, July 1095-1096.

Some reasons for marriage dispensations, HPR. 1933, Apr. 738.

Fees for dispensations, HPR. 1922, Mar. 655.

Marriage dispensation fees and the poor, HPR. 1936, May 868.

Expired marriage dispensation, ER. 1941, June 525; HPR. 1930, July 1092; 1931, Jan. 404-405.

ART. IV

Impediments in Particular

Before he assists at a marriage, the priest must first inquire into the marital freedom of the intended spouses, i.e., into their freedom from marriage impediments, as was already said. Those impediments we shall now consider, each in turn. Only that class of impediments which embraces impedient and diriment impediments will he of interest to us here, whether public or occult is immaterial.

The Code contains 7 impedient impediments, and 13 diriment impediments. Others which may have existed under pre-Code law arc no longer in force. However, if a marriage was contracted prior to May 19, 1918, in contravention of the law then in force, the marriage remains invalid under the Code, and must be validated either by renewing consent after a dispensation is obtained from the pre-Code impediment, unless the impediment ceased of itself, e.g., nonage, or it must be validated without renewal of consent through a *sanatio in radice* (Code Comm. June 2-3, 1918; *Acta* X, 346).

We shall consider first the impedient, and then the diriment impediments.

§1. Impedient Impediments

These, as was said, simply forbid marriage, but do not invalidate it. We can reduce them to three categories, although they are seven in number: (1) simple vows; (2) legal adoption; (3) mixed religion.

A. Simple Vows
(c. 1058)

Solemn vows are those which are made in a religious Order in perpetuity. All other vows are simple vows.

Simple vows are public vows if they arc professed by candidates

in religious Congregations or Orders, (if made in an Order, they are necessarily temporary in nature). All other vows arc private vows.

The following simple vows, whether public or private, forbid marriage under pain of sin:

(1) The vow of simple virginity, i.e., the vow to avoid every deliberate *consummated* sin against chastity;

(2) The vow of perfect chastity, i.e., the vow to avoid every deliberate sin against chastity, both consummated and unconsummated;

(3) The vow not to marry;

(4) The vow to receive sacred orders;

(5) The vow to embrace the religious state.

If by particular law a simple vow has the effect of invalidating marriage, e.g., the simple vows taken by Jesuit scholastics, then the vow will invalidate marriage, otherwise no simple vow invalidates marriage.

In practise it is usually the confessor who meets with the impediment of the vow. If he is certain that the penitent made a real vow and not a mere promise, he will apply to the chancery office for the necessary dispensation, and will use a fictitious name for the penitent. But *if* the penitent is a religious fugitive or apostate, the confessor as such can do nothing, because the vow is public in nature. The vow is reserved to the Holy See or the local Ordinary (cfr. p. 379). If the penitent had been dismissed from his religion with temporary vows, the vows automatically ceased upon his dismissal (cfr. p. 390).

B. Legal Adoption

In canon law legal adoption renders a marriage between foster parent and foster child illicit, provided the civil law of the country recognizes it as an impedient impediment (c. 1059).

In the United States legal adoption nowhere exists as a civil law impediment (Woywod, *o.c.,* n. 1038).

C. Mixed Religion and Disparity of Cult

There are no impediments more frequently met with in our country than these two. This is due to our large non-Catholic population among whom Catholics are often urged by circumstances to choose their life partners.

(1) *Definitions*

The impediment of mixed religion forbids marriage of a Catholic with a *baptised* non-Catholic. It is an impedient impediment only (c. 1060).

The impediment of *disparity of cult* forbids marriage of a Catholic with an *unbaptised* person (c. 1070). This is an invalidating impediment, and as such does not belong in the present section which is considering only impedient impediments. However, the two impediments have so much in common that by discussing them together we shall avoid useless repetition and promote clearness of thought.

To have an impediment of mixed religion it is not necessary that the non-Catholic shall have been baptised in a Protestant or schismatical sect. A person who has been baptized in the Catholic Church and who later joined some heretical or schismatical sect creates the impediment if he wishes to marry a Catholic. If a person is a Protestant only in the sense that he attends, and belongs to a Protestant church, but is not baptised, we have the impediment of disparity of cult. Sometimes a Catholic will want to marry a person who was baptised a Catholic in infancy but was raised a non-Catholic and belongs to no non-Catholic Church. We have no impediment here, just as we have no impediment if a Catholic wishes to marry a fallen away Catholic belonging to no sect, or an excommunicated Catholic, or a Catholic who has joined the Freemasons, or some other forbidden society. In cases of this kind the bishop will he consulted, and he will *permit* marriage at the most, no dispensation being needed, but he will require of the parties the same written guarantees as in the case of mixed marriages strictly speaking. For here there is the same danger of perversion to the Catholic and the children as exists in mixed marriages (c. 1065, 1066).

If it is not known for certain whether a non-Catholic is baptised or not, it is not permitted to give him Catholic baptism unless he wishes to take instructions and join the Church. Rather a dispensation will be sought from the impediment of mixed religion and disparity of cult *ad cautelam* (for caution's sake). We already spoke on this on p. 453.

(2) *Promises or Guarantees*

The Church most severely prohibits mariage between a Catholic and a non-Catholic because of the general and well-founded presumption that such unions constitute a source of danger, or per-

version, to the faith of the Catholic party and the offspring. Hence, she will not permit these unions unless, in addition to the usual canonical reason for a dispensation, there is some assurance that such danger of perversion will not be present in any given contemplated marriage (c. 1060).

Therefore, before a dispensation from the impediment of mixed religion or disparity of cult will be granted, both the Catholic and the non-Catholic must promise or guarantee that all the children to be born of the union will he baptised and educated in the Catholic faith. Moreover, the non-Catholic must promise not to interfere in the Catholic's practise of his or her religion (c. 1061). Cfr. also what was said on this point on p. 455, and refer to the specimen form of promises given on p. 463.

In an answer of the Holy Office (Jan. 16, 1942, *Acta,* 1942, 22) it was ruled that the promise to educate the children as Catholics need be given by the non-Catholic only in respect to children to be born, not in respect to children already born of the union, e.g., if there is question of validating a civil law marriage. But the Catholic must promise to strive to the best of his or her ability, especially by means of prayer and good example, to bring the other children eventually into the Church.

It docs not suffice that the parties in mixed marriages sign the promises. There must be moral assurance that the promises will be kept (c. 1061). In the last analysis it will be the priest who instructs the non-Catholic who will give this assurance when he requests the dispensation. If from the general conduct of the non-Catholic, or even of the Catholic, in his interviews with them prior to the wedding, the priest feels that the promises are not given sincerely, or that the non-Catholic is going through the instructions in a most unconcerned frame of mind, he ought to report his impressions to the chancery, and abide by their judgment.

On June 14, 1932, the Holy Office *(Acta* XXIV, 25) decreed that the promises in mixed marriages (this term is not to be confused with mixed religion, as it embraces marriages contracted with the impediment either of mixed religion or disparity of cult), the H.O., we repeat, decreed that in all such mixed marriages the promises be drawn up in a form recognized by the civil law of the country, and enforceable in the secular courts. But in a subsequent private answer to a bishop of Ireland (cfr. Bouscarcn, *Canon Law Digest,* I, 506), the H.O. declared that its decree was not intended for countries where the civil law docs not recognize the binding force of promises which relate to the future education of the children. In the United States some jurisdictions have denied the validity of

such promises, while most others have had no occasion to review such cases. Therefore, until it is certain that a given jurisdiction will uphold the legality of the promises, the decree of the H.O. need not be observed.

The parties in a mixed marriage are never allowed to renew marital consent before a non-Catholic minister of religion. And if the pastor fears they will do so, e.g., the non-Catholic's father is a Protestant minister or a Jewish rabbi, he will not assist at their marriage before consulting the Ordinary (cf. c. 1063). If they approached the minister before coming to him, he must obtain faculties to absolve the Catholic from his censure (c. 2319).

The pastor should with great solicitude see to it that thost who have contracted mixed marriages, and live in his parish, faithfully carry out their promises. Pastors should from time to time instruct their people on the dangers inherent in mixed marriages, e.g., by occasional sermons in church on this subject (c. 1064).

Concerning banns in mixed marriages we have already spoken. Concerning the ceremonies in mixed marriages, cfr. p. 495.

Books of Special Reference

White, Robert J., *The Legal Effect of Ante-Nuptial Promises in Mixed Marriages,* Philadelphia: Dolphin Press, 1932.

White, Robert J., *Canonical Ante-Nuptial Promises and the Civil Law,* C. U. Press, 1934.

Boyle, David J., *The Juridic Effects of Moral Certitude on Pre-Nuptial Guarantees,* C. U. Press, 1942.

Schenk, Francis J., *The Matrimonial Impediments of Mixed Religion and Disparity of Cult,* C. U. Press, 1929.

Lowry, James M., *Dispensation from Private Tows,* C. U. Press, 1946.

Ileneghan, John J., *The Marriages of Unworthy Catholics,* C. U. Press, 1944.

O'Donnell, Cletus F., *The Marriage of Minors,* C. U. Press, 1945.

Articles and Consultations

Legal relationship impediment in the U. S., ER. 1934, Apr. 394-403.

Which bishop dispenses in mixed marriages? HPR. 1938, Sept. 1292.

Meaning of *universa prolis,* ER. 1944, May 389; 1930, Nov. 533; 1934, May 534.

The wrong dispensation for mixed marriages, ER. 1931, Feb. 124-139; Mar. 282-295; Apr. 371-387.

Sincerity of promises must hr evident, HPR. 1929, June 998; How evident? HPR. 1938, Nov. 172.

Can promises be oral? HPR. 1925, Aug. 1212.

Good faith required in pre-nuptial promises, ER. 1921, Sept. 257-262.

Must promises be drawn up in form recognized by U. S. courts? ER. 1932, Apr. 408-411 ; 1933, Feb. 185-190.

N. Y. court upholds pre-nuptial agreements, ER. 1943, Jan. 60.

Nature of pre-nuptial instructions in mixed marriages, ER. 1929, Oct. 399-408.

Promises apply only to children not yet horn. The Jurist, 1942, Apr. 185.

Second marriage before minister, ER. 1934, Feb. 173-175; HPR. 1921. Sept. 1143.

A schismatic marries an unbaptised person, marriage valid? HPR. 1938, July 1075.

Mohammedan marriage through inadvertance, ER. 1938, Apr. 478.

Does disparity of cult hind Uniates? ER. 1931, Oct. 409.

Dispensation to marry a Jew. ER. 1936, Nov. 533-534.

Baptised Catholic, raised non-Catholic, marries infidel, valid marriage? HPR. 1940. Nov. 169.

No mixed marriage present, but guarantees advisable, ER. 1939. Feb. 166.

Procedure in marrying a Catholic girl to an apostate Catholic, IIPR. 1936, Mar. 631.

Marriage with declared unbelievers an impediment? HPR. 1938. Aug. 1188.

Performs marriage for a Catholic unwilling to confess, CST. I, 290.

How to apply to chancery if non-Catbolic was baptised Catholic but not raised a Catholic, ER. 1923, May, 517.

§2. Diriment Impediments

Diriment impediments, we said, are those which invalidate marriage. As among the impedient impediments mixed religion occurs the oftcncst. so among the diriment impediments disparity of cult ranks first in frequency. In fact, these two impediments, namely, mixed religion and disparity of cult, both of which wc have already discussed, are probably responsible for 90 percent of

all marriage dispensations granted by the chancery offices in this country.

Next to them probably comes consanguinity, followed by affinity, and the impediment of crime arising from adultery. All other diriment impediments arc quite negligible in the sense that the priest in his pre-marital investigation seldom meets with them. It is true that the impediment of the bond shows up very often, but in most cases it is but an apparent impediment, otherwise the parties would hardly approach the priest to get married. Were it a real impediment a dispensation would be impossible since it is an impediment of the natural law. But where it is only an apparent impediment, although a dispensation is out of place, yet the case can be referred by the pastor to the chancery office, or to the diocesan court, depending on circumstances to be more fully described in Book IV of this Manual. To say more here would be to anticipate unnecessarily (cfr. also p. 476).

The diriment marriage impediments are thirteen: (1) nonage; (2) impotency; (3) the bond; (4) disparity of cult; (5) major orders; (6) the solemn vow of chastity; (7) abduction; (8) crime; (9) consanguinity; (10) affinity; (11) public honesty; (12) spiritual relationship; (13) legal adoption. Concerning deficient consent, and disregard of the juridical form of marriage, wc shall speak in the next two articles, since, although they invalidate marriage, they are not impediments in the technical sense of that term.

Xonage— Marriage cannot be validly contracted by a girl before her 14th completed year of age, nor by a boy before his 16th completed year of age (c. 1067, §1). This is an impediment of ecclesiastical law and docs not bind the unbaptised. The law of nature merely requires that marriage be contracted by a person who has sufficient knowledge and .discretion concerning the import of the marriage contract, which knowledge and discretion can be attained prior to the ages mentioned. But because in a case of doubt it would be difficult for the court to pass judgment upon the validity of a marriage where lack of sufficient discretion required by natural law is alleged, the Church establishes a more definite rule as just stated.

Under the pre-Code law the age for marriage coincided with the age of puberty, i.e., the 12th year for the girl and the 14th year for the boy. These ages for puberty being based upon a presumption of law, if it could be proved that a girl or boy had arrived at the age of womanhood or manhood before the 12th and 14th years respectively, e.g., in a case of pregnancy, the parties could contract marriage without a dispensation, the impediment of age

being considered non-existent in their case. Lnder the law of the Code the ages of marriage arc fixed; they do not coincide with the ages of puberty, and hence, the former principle that the parties are debarred from marriage before the ages established by canon law *nisi malitia supplet aetatem* no longer holds.

Although canon law does not invalidate marriage after the ages of 14 and 16, yet pastors should persuade young people not to contract marriage before the age sanctioned by the custom of the place (c. 1607, §2). In fact, as we saw, pastors ought not to marry minor children at all against the just dissent, or without the knowledge of the parents, e. g., in a case of elopement; at least he should not do this without first consulting the local Ordinary (cfr. c. 1034).

Impotency—Antecedent and perpetual impotency, whether on the part of the woman or the man, whether known to the other party or not, whether absolute or relative, invalidates marriage bv the very law of nature. If there is doubt whether impotency is present, be the doubt one of law or one of fact, the marriage should not be forbidden. Sterility neither forbids nor invalidates marriage (c. 1068).

The Code does not define what is meant by impotency; neither arc the authors agreed. All admit that the so-called *impotentia coeundi* constitutes impotency which invalidates marriage, namely, the inability to have natural sexual intercourse. Likewise all are agreed that sterility alone is present, and impotency is absent, when natural intercourse between two persons is possible, and at the same time both parties possess all organs necessary for generation, but generation does not follow, e. g., because the seed is not fertile, as in old people. The controversy concerns the case where intercourse is possible, but certain organs are lacking which are essential to beget offspring, e.g., if a woman lacks both ovaries, or the womb. Is such *impotentia generandi* also an impediment, or only the *impotentia coeundi?*

The controversy has little practical value in view of the principle that marriage should not be impeded in doubtful cases of impotency, whether the impotency is one of fact or one of law. Moreover, the priest before assisting at a marriage need not inquire into this point at all. After marriage it will be for the matrimonial court to pass upon the validity of the marriage; and the doubt remaining, the marriage must be upheld as valid. But a dissolution may be possible on the ground of an unconsummated marriage. As to cases of vasectomy, whether these constitute impotency is disputed, since certain medical authorities teach that the organs can be restored

to their original condition so that intercourse would again be made possible for the man, i. e., impotency is not perpetual.

A supervening impotency does not invalidate marriage. Nor docs antecedent impotency do so if the defect can in time disappear. Relative impotency invalidates marriage only between the parties in question, but not with respect to all other men or women. This is particularly verifiable when inability to perform the sexual act results more from psychical causes than from physical genital deformities.

If a penitent has scruples concerning the licitness of conjugal relations on the score of possible impotency discovered subsequent to marriage, and if from what is said the impotency docs not appear altogether certain to the confessor he can advise the penitent to submit his case to the matrimonial court preferably through the pastor, and, pending the decision of the court, the penitent may continue to exercise his marriage rights.

Impediment of the bond—They contract marriage invalidly who are held to the bond of an already existing marriage, even though the first marriage was not consummated (c. 1069, §1). This follows from the indissolubility of marriage; and it is a natural law impediment binding also the unbaptized. The principle suffers three exceptions, because in three cases a former marriage can be dissolved for reasons other than death: 1) by dispensation of the Pope in the case of a former non-consummated marriage; 2) through the application of the Pauline Privilege; 3) by a dissolution declared in favor of the faith outside of Pauline Privilege cases by the Roman Pontiff (cfr. art. VII of this chapter).

There is no impediment of the bond present when the former marriage was contracted invalidly. But no priest may assist at the marriage of a divorced person, the former spouse being still alive, on the theory that the former marriage was invalid, or that it has been dissolved because the Pauline Privilege is applicable. All such cases must first be referred to the bishop or to the matrimonial court for an authoritative decision (c. 1069, §2). Sometimes a formal trial will be necessary, sometimes a summary decision may be given, as is explained more at length in Book IV. Even where the former marriage appears to have been dissolved by the death of the one spouse, but there is no certain proof of death, it is reserved to the bishop alone to permit a second marriage on the basis of presumed death (cfr. marriage processes in Bk. IV.

Disparity of cult—This impediment was sufficiently described on p. 470-472.

Major Orders—A man who receives subdeaconship is thereafter

debarred by ecclesiastical law from contracting a valid marriage (cfr. c. 1072). Since the impediment is of ecclesiastical law only, it may be dispensed from, but the dispensation is rarely granted, especially to priests. The latter, as we saw, cannot be dispensed even in danger of death, save by the Holy Sec. But those who have been reduced to the lay state of their own volition on the plea that they were forced into major orders, arc dispensed also from celibacy (cfr. c. 214).

Solemn vow of chastity—Those who have professed solemn vows in a religious Order cannot validly contract marriage (c. 1073). The same is true of those who have taken only simple vows to which the Holy See has attached an invalidating force, as with the Jesuit scholastics. The impediment is of ecclesiastical law and admits of dispensation, which is not granted save for very grave reasons, e. g., in the case of dismissed religious.

Abduction—As long as she remains in his power there can be no valid marriage contracted between the man and the woman whom he abducts with a view to marriage, or whom he forcibly detains in a place whither she went of her own accord (c. 1074). The impediment in question is not frequently met with at the present day, at least in our country. It should not be confused with cases of elopement where no constraint is exercised on the woman.

Impediment of crime—Two crimes invalidate marriage: adultery, and conjugicide.

To discourage adultery, canon law renders a marriage invalid which is contracted by two persons who committed adultery while one or both were still held to an existing marriage, provided they promised each other marriage upon the death of the other spouse or spouses, or provided they attempted marriage (c. 1075, n. 1). Therefore a dispensation should always be asked from the impediment of crime when a civil marriage must be validated, the marriage having been contracted during the lifetime of a former spouse from whom a civil divorce was obtained, but who is now dead. The law presumes in this case that the parties united in civil marriage consummated the same, and thus were guilty of adultery. In cases where adultery is not evident, e. g., a civil marriage is not now being validated, the priest need not inquire concerning its presence during the investigation prior to marriage. If there was secret adultery and no attempt at marriage, the case will be one for the confessor, and he should petition a dispensation, concealing the name of the penitent. But in all cases the adultery must have been

formal: the party must have known that the other was a married or divorced person.

The impediment of crime is also present, apart from the promise of, or attempt at, marriage, if the parties to the contemplated marriage had committed adultery (naturally during the continuance of a former marriage), and one of them had murdered his own or the other's spouse (c. 1075, n. 2). Finally, the impediment of crime exists, apart from adultery, if both parties to the present contemplated marriage had by mutual cooperation brought about the death of the former spouse (c. 1075, n. 3).

While it is certain that the impediment of crime is multiplied if both nupturients had been married at the time of the adultery, there arc other cases where authors dispute either concerning the multiplication or the number of multiplications of the impediment. In practice the priest will state the facts of the case, and the Ordinary will grant the dispensation *(if said case requires,* or in some other such general and safe way.

Whenever the Hol}· See grants a dispensation from the bonds of a sacramental non-consummated marriage, or permits a second marriage by reason of the presumed death of the former spouse, the dispensation or permission always carries with it an implied dispensation from the impediment of crime if such is needed, provided the crime did not arise from conjugicidc (c. 1053). The dispensation is simply granted ; the priest need not inquire if it is needed.

Consanguinity—Consanguinity is the relationship between persons of the same blood, as the word itself denotes.

In canon law consanguinity is computed by lines and degrees. The *line* is the series of persons who descend from the same *stock,* the latter being the individual from whom all persons of the same line descend. The line may be *direct* or *collateral (oblique).* Those persons constitute the direct line who descend one from the other, cither immediately, as father and daughter, or mediately, as grandfather and granddaughter. It is collateral when the persons constituting it, while all descending from the same stock, do not descend one from the other, c. g., unde and niece, brothers and sisters, cousins, etc. The *degree* is the distance which separates one relative from the other, whether in the direct line or collateral line (cfr. c. 96, g1).

In the direct line there arc as many degrees as there are generations; or to put it another way, there are as many degrees as there are persons excluding the common stock (c. 96, §2). Thus between father and daughter there is one degree; between grandfather and granddaughter two degrees, etc.

In the collateral line there are as many degrees as there are generations in one line only; but if the two lines are unequal, there are as many degrees as there are generations in the *longer* line (c. 96, §3). Thus, between brother and sister there is one degree; between first cousins there are two degrees; between uncle and niece there are likewise two degrees, and because the lines are unequal we may say that a girl is related to her uncle in the second degree of the collateral line touching the first. By way of illustration we append a geneological tree:

John Brown
(Common Stock)

Joseph Brown	Mary Brown (married Adam Smith)
Charles Brown	Andrew Smith
William Brown	Elizabeth Smith

In the above diagram William Brown and Elizabeth Smith are second cousins; they are related to each other in the third degree of the collateral line. John Brown is the common stock; he is the father of Joseph and Mary Brown, grandfather of Charles Brown and Andrew Smith, great-grandfather of William Brown and Elizabeth Smith. Charles Brown and Elizabeth Smith arc uncle and niece; Charles Brown and Mary Brown are nephew and aunt. Charles Brown and Andrew Smith are first cousins. Joseph Brown and Mary are brother and sister, etc.

Although all living men arc blood relatives in a sense, because all descend from Adam and Eve as from their common parents, yet it is only near relationship which, as experience teaches, produces barren marriages, and for that reason is regarded by both canon and civil law as an invalidating impediment to marriage. In canon law consanguinity invalidates marriage between all persons of the direct line in all degrees, whether the persons arc of legitimate or illegitimate birth; hence, between mother and son, father and daughter, grandfather and granddaughter, etc. In the collateral line consanguinity is a diriment impediment to the third degree inclusively, and the impediment is multiplied as often as the common stock is multiplied (c. 1076, §1,2). Thus, if two brothers marry two sisters, the children of the both families will be first cousins to one another by a two-fold bond of consanguinity in the collateral line second degree.

To what extent consanguinity is a diriment impediment by divine law is not certain beyond the first degree of the direct line. However, lest the Church exceed her powers by dispensing from the divine law in a doubt of law, she never dispenses from consanguinity

in the direct line, nor in the collateral line first degree to permit marriage between brother and sister. For the same reason a dispensation is never granted in a doubt of fact as to whether the parties to a contemplated marriage arc related by consanguinity in any degree *of* the direct line, or in the first degree of the collateral line, e. g., if the groom is possibly the illegitimate son of the bride's father by reason of illicit and secret intercourse which took place at one time between the bride's father and the groom's mother (c. 1076, §3).

The local Ordinaries of the United States have no broad delegated faculties to dispense from consanguinity. They should use the greatest discretion in a marriage of uncle and niece, or aunt and nephew and they must formulate the petition for the dispensation in their own handwriting (S. C. Sacr., Aug. 1, 1931 ; *Acta* XXIII, 413).

When requesting a dispensation in the case of consanguinity, the priest should mention the line and degree, and submit an outline of the gcncological tree. He would do well to add the relationship as this is expressed in common parlance, e. g., *first cousins.* If the impediment is multiple, this fact should be mentioned likewise, describing how the impediment became multiplied.

Affinity—This word designates the relationship which exists between a married person and the blood relatives of his or her spouse. Such persons are said to be related not by blood but by force of law; they are law relatives. Frequent and intimate social intercourse such as that which is found among law relatives could easily lead to sins against chastity, did not the law discourage sexual intercourse by making a subsequent marriage to cover up the sins impossible, or at least difficult, by establishing a diriment impediment between close relatives-in-law.

The impediment of affinity arises only from a valid sacramental marriage, whether the marriage is consummated or not (c. 97, §1). Hence, too, only from a marriage contracted between two baptiz.cd persons. If the marriage was invalid, it gives rise not to affinity but to the impediment of public honesty (cfr. *infra).*

The impediment exists only between the man and the blood relatives of his wife, and between the wife and blood relatives of the husband (c. 97, §2). It is so computed that those who arc related to the husband by blood are related in the same line and degree by affinity to his wife, and vice versa (c. 97, §3). Thus, a man is related to his wife's sister in the first degree of the collateral line, to his wife's niece in the second degree of the collateral line, to his wife's first cousin in the second degree of the collateral line.

to his wife's mother in the first degree of the direct line, to his wife's daughter from a former marriage, i. e., to his stepdaughter, in the first degree of the direct line, etc.

Affinity invalidates marriage in all the degrees of the direct line, and to the second degree inclusively of the collateral line (c. 1077, §1). It is an impediment of ecclesiastical law, but the Church seldom dispenses from the impediment in the direct line *consummato matrimonio,* not even in danger of death. For the reason underlying this strict practice, cfr. literature at the end of this article.

Affinity does not beget affinity. 1'hat is, a wife's law relatives arc not related to her husband's law relatives. Therefore, two brothers of one family can marry two sisters of another family.

Affinity is multiplied as often as the impediment of consanguinity from which it proceeds is multiplied. Again, as often as a person marries a blood relative of his deceased spouse (c. 1077, n. 2).

Public honesty—Called also public decency and public propriety, the Code term being *publica honestas,* this impediment arises from an *invalid* marriage, or from public and notorious concubinage. Were the marriage valid it would be affinity.

It invalidates marriage between a man and the blood relatives of the woman only in the *direct* line, and to the second degree, and vice versa (c. 1078).

Such a marriage would offend against the public's sense of decency even though the first marriage was only apparently a marriage, or no marriage at all as in ojxm concubinage.

The impediment is seldom verified because it would be a marriage between step-parent and step-child, and the spouses would be years apart in age. Civil marriage will not give rise to this impediment barring a future marriage with a step-child, unless the civil marriage was consummated (Code Comm. Mar. 12, 1929; *Acta* XXI, 170).

Dispensations arc easily granted, because it is an impediment of minor degree. But a dispensation will never be granted if there is doubt that a person will marry his own child. Thus, it may happen that a man wants to marry his supposed step-daughter who was born nine months after her supposed father's death, and eight months after her mother's marriage to her supposed stepfather.

Spiritual relationship—The respect due to him from whom one receives baptism, or who is charged with his spiritual training by reason of baptismal sponsorship, seems incompatible with that equality which marriage is supposed to create between the spouses. And so, c. 1079 rules that there can be no valid marriage between

the baptised person and the minister (supposing a lay minister in an urgent case), or between a person and his sponsor at baptism. But dispensations are easily granted, the impediment being of minor degree.

Legal relationship— Between an adopting parent and the adopted child marriage cannot be validly contracted in the Church if the civil law of the land regards adoption as an invalidating impediment (c. 1080). In the U. S. legal adoption is an impediment in no State. Note that here is a case where the Church canonizes civil Jaw.

Books of Special Reference

O'Dea, John C., *The Impediment of Nonage,* C. U. Press, 1944.

O'Malley-Walsh, *Essays on Pastoral Medicine,* New York; Longmans Green Co., 1925.

Rice, Patrick W., *Proof of Death in Pre-nupfial Investigation,* C. U. Press, 1940.

Fair, Bartholomew, F., *The Impediment of Abduction,* C. U. Press, 1944.

Donohue, John F., *The Impediment of Crime,* C. U. Press, 1931.

Wahl, Francis X., *The Matrimonial Impediments of Consanguinity and Affinity,* C. U. Press, 1934.

Articles and Consultations

A girl cannot marry on her 14th birthday, ER. 1941, July 42.

Impediment of age, HPR. 1920, Nov. 132-133.

Girl's civil marriage declared invalid from viewpoint of age. After conversion wants to marry a Catholic, HPR. 1934, June 9/0.

Ovariotomy and impotence, HPR. 1922, Jan. 406-408.

Impotence discovered after marriage, HPR. 1926, Apr. 730.

Is sterilization an impediment? HPR. 1934, Mar. 628.

A ratum et non-consummatum case, CST. I, 155.

Proof of death of husband or wife, ER. 1933, Sept. 282-286.

A ligamen case, ER. 1941, July 63.

A combined bond and clandestinitv case, HPR. 1921, Feb. 415-416.

Proof of death of war combatants, Jurist, 1946, Jan. 1-38.

First husband has disappeared over a number of years. Can second marriage be validated? HPR. 1934, May 852.

Was death of husband lawfully presumed here? CST. V. 276.

Crime arising from presumed death of former spouse, HPR. 1928, Mar. 648-651.

The *impedimentum criminis,* ER. 1919, Mar. 241-246.

Promises marriage if he can divorce his wife. Is this crimen in respect to subsequent marriage? HPR. 1928, Feb. 542.

Impediment of crime case, HPR. 1926, Sept. 1305.

A case of combined crimen and Pauline Privilege, HPR. 1928, July 1110.

A complicated crimen, affinity and public proprietv case, HPR. 1929, Feb. 539-542.

A case of crimen, HPR. 1937, Jan. 416-417.

A crimen impediment case, CST. 11, 7; IV, 66.

Theory of ban on near kin marriages, ER. 1932, Aug. 136-148; Sept. 259-272.

Double impediment of consanguinity, HPR. 1922, Mar. 656.

Brother marries sister in infidelity, HPR. 1927, Sept. 1324-1331.

Complicated case of consanguinity and affinity, HPR. 1928, May 889.

Marriage between half brothers and half sisters, HPR. 1928, Nov. 190.

A case of probable brother and sister marriage, CST. II, 58.

Can spouses be left in bona fide who do not know they are first cousins? CST. V, 297.

Does affinity affect the unbaptized? HPR. 1924, Tan. 394-398; 1926, Oct. 70.

The impediment of affinity, ER. 1919, Oct. 396-401.

No affinity between widow and husband's brother-in-law, ER. 1930, Aug. 204.

Marriage with mother-in-law after a doubtfully valid and dissolved previous marriage, HPR. 1927, May 868.

Marriage with one's step-daughter, HPR. 1927, May 874.

Dispensing from affinity in the direct line, ER. 1925, Aug. 197-198; HPR. 1924, Mar. 619.

The impediment of public proprietv, ER. 1921, Oct. 492-498; HPR. 1922, Mar. 656.

Theory of spiritual relationship in baptism, ER. 1937, July 81.

Legal relationship impediment in the U. S., ER. 1934, Apr. 394-403.

ART. V

Marriage Consent

Because marriage is a contract, and consent is the very essence of contracts, it follows that no marriage can exist to which both parties do not consent.

This marital consent cannot be supplied by any human authority, as may be true of parental consent supplying for that of their minor children in other kinds of contracts (cfr. c. 1081, §1).

Canon 1081, §2 defines the marriage consent to be: *an act of the ivill whereby each party gives and accepts perpetual and exclusive rights to the body as concerns acts which tend by their very nature to the generation of offspring.*

Even though neither spouse at the time of the marriage is under the influence of extreme fright, drugs, intoxicants, etc., sufficient to deprive one entirely of the use of reason, yet marriage consent may be absent due to: (1) deficient knowledge; (2) deficient intention; or (3) deficient freedom.

Concerning each of these possibilities we shall now speak in turn, though it may be remembered that the priest will seldom meet with these conditions in his investigation prior to marriage. Often they are withheld from him at that time, and the question whether consent was really given arises later when, after a divorce, one of the spouses alleges this as a cause for the matrimonial court to set aside the marriage and permit him to contract a new marriage. Catholics must now sign a questionnaire under oath in which they state before marriage that they arc placing no obstacle to valid consent, which they will give unconditionally and of their own free will on the day of the wedding. Hence, in the case of Catholics who have made such statement in writing, marriages invalid by reason of deficient consent will he rare in future. Yet the following principles should be studied: (1) because it is only recently that signed statements have been requested of Catholics regarding the intention to contract; (2) because, a Catholic may wish to marry a divorced non-Catholic, or to have such marriage with him validated, and there may be no way in which this is possible except for the Church court to set aside the non-Catholic's first union on the grounds that he gave defective consent, if this can be proved by him.

It now remains to see how marriage consent may be absent because of: (1) deficient knowledge; (2) deficient intention; (3) deficient freedom.

§1. Deficient Knowledge

This may arise either: (1) from ignorance; (2) from error; (3) from fraud.

Ignorance—This is lack of knowledge concerning the purpose or nature of marriage. If a party docs not know this much at least concerning marriage that it is a permanent union of man and woman for the purpose of begetting children, the marriage will be invalid. But such ignorance is not presumed after the age of puberty, and one who later alleges such ignorance has the duty to prove it was present in his case (cfr. c. 1082).

Provided the parties know as much as just stated concerning the nature of marriage, it will suffice for the validity of consent, and a more advanced knowledge of the physiology of conception and generation is not necessary.

Any other ignorance in connection with marriage may be reduced to two headings, and considered separately, as arising cither from error or fraud.

Error—While ignorance is rather a lack of knowledge, error is mistaken knowledge, or false judgment. Error invalidates marriage in two cases:

(1) If a mistake is made concerning the identity of the spouse, as where John marries Bertha believing her to be Ann (c. 1083, §1). Such mistakes arc hardly possible where courtship precedes marriage.

(2) If a mistake is made concerning some *quality* of the other party, provided the quality or characteristic desired is such that it would amount to an error concerning the person himself (c. 1083, §2), as where one marries a slave thinking him to be a free person *{ibid.)*.

In practise it will be difficult to prove that an error concerning some characteristic of the other amounted to an error concerning the person himself. The only way this can be shown is for the interested person to furnish proof that in his mind the desired quality or characteristic amounted to a *conditio sine qua non.* If a girl marries a man whom she believes to be temperate and it later turns out that he is a confirmed alcoholic, or if a man marries a girl whom he believes to be a virgin and he learns later that she was a woman of loose morals, the marriage will be invalid in the external forum only if the party had made it clear in writing, or before witnesses, prior to marriage that such qualities were desired as a *conditio sine qua non.* In such cases error really amounts to deficient intention ; it has affected the will, not merely the intel-

lect. Whereas, if one simply *believes* that the other spouse possesses certain desired characteristics, or *hopes* that he does, the error, if later discovered, cannot be brought forward to invalidate the marriage. This is true even though there is question of antecedent error, i.c., such that marriage would not have been contracted had the truth been known.

From what has been said it follows that a *simple* error concerning the indissolubility of marriage docs not invalidate marriage, even though it be antecedent error (c. 1084). Hence, a convert cannot ask for a declaration of the nullity of his first marriage so as to be permitted to contract a new marriage with a Catholic in the Church on the plea that at the time of his former marriage he entertained erroneous opinions about the indissolubility of marriage. Only if he (or any other person for that matter, but the case is more likely to occur with converts) can prove that he entered upon his first marriage under agreement that the union could be dissolved by a civil divorce at the volition of cither party, will the marriage he considered invalid. Here it is not error that invalidates marriage, but rather the presence of two conflicting intentions: the intention to contract a real marriage, and the intention to contract a dissoluble marriage. In such case the error is *qualified,* not simple. Where only simple error is present, it is presumed that the party wishes to contract marriage according to God's plan, namely, an indissoluble marriage; and if he merely thought that the marriage could be dissolved by divorce, this error is presumed to have been overshadowed and absorbed by the more general intention to contract marriage according to God's plan. The error remained in the intellect; it did pass over into the will and become an intention.

Belief, or even subjective certainty, that one is contracting an invalid marriage does not necessarily exclude true marital consent (c. 1085). Hence, a civil marriage contracted by a Catholic can still be validated by the *sanatio in radice* without the renewal of consent according to the Catholic form (cfr. p. 510). Such a *sanatio* cannot be granted, however, if the party can prove that exceptional circumstances induced him to go through a civil marriage ceremony without the slightest *intention* of contracting marriage.

Fraud—We said that error concerning some accidental quality with respect to the intended spouse does not invalidate marriage. Is this true even though an innocent spouse was deliberately misled into error, and deceived through the other's misrepresentation, whether this consisted in conduct, words or silence? Suppose the man poses as a person of wealth, whereas he is poor; or suppose a man is silent concerning his past prison record, or a mental con-

dition he has inherited, or a racial strain that docs not show up in him but later shows up in the offspring, etc.

In cases of fraud such as these the civil courts will consider the marriage voidable, and will issue a decree of nullity upon request in order to repair the injustice. In the Church, on the other hand, a marriage where fraud had been practised and a grave injury suffered, cannot be considered voidable due to the fact that by divine law a valid marriage cannot be voided because it is indissoluble. Nor will the Church legislate that all marriages, where serious fraud had been practised, shall be considered invalid *ab initio*. This would be a dangerous policy, and the Church courts would soon be cluttered with cases, for there are extremely few alliances which do not create disillusionment for the parties as time goes on.

There are remedies, however, against pre-marital fraud. One is a reasonably prolonged period of courtship. The other is for the party who fears he is being deceived to make it clear before marriage, either in writing or before two witnesses, just what he expects of the other, or docs not expect, and this he will formulate into a *conditio sine qua non*. If later he discovers that he was defrauded, he can have the marriage set aside as invalid from the beginning due to an error concerning a personal quality that amounted to an error in the identity of the person himself, as explained above.

§2. Deficient Intention

Marriage is also invalid due to lack of consent if, while the party labors under no ignorance or error, he nevertheless does not intend to contract marriage. But in the external forum it is presumed that the internal assent of the mind was in conformity with the words expressed, or the signs employed, in the marriage ceremony (c. 1086, §1). And the burden of proof that he gave no internal consent will rest with the plaintiff.

There is no intention to contract marriage if even one party: (1) excludes marriage itself; or (2) all rights to the conjugal act; or (3) some essential property of marriage; or (4) if he places a condition to his consent and the condition is not verified. Whether these intentions or the conditioned consent are unilateral or bilateral, formulated into a *conditio sine qua non* or not, is immaterial.

Exclusion of marriage itself—This happens in mock marriages. It happens in a marriage of convenience. It may happen in other kinds of marriages. The consent is only feigned. There is no marriage (c. 1086, §2).

Exclusion of the conjugal act— Here the very object of the marriage contract is missing. There can be no contract without an object. By divine law the object of marriage is copulation for the purpose of perpetuating the human species. Thus, there is no marriage *if* the parties agree to have no children.

But the marriage remains valid if only the *exercise* of the right to the conjugal act is denied at the very start. Here there is an understanding to abuse the right, rather than to deny it. Such would be the case where the parties agree before marriage to have no more than two children, or no children for the first two years, or until the husband finds better employment, etc.

Exclusion of the essential properties of marriage— These are unity, sacramentality and indissolubility. In practise, however, it is the exclusion of the last that is most frequently encountered. If two persons agree before marriage that they may resort to divorce in the event the marriage proves unhappy, there is no marriage (cfr. c. 1086, §2). There must have been an agreement to this effect, i.e., indissolubility must have been excluded by a positive act of the will, otherwise the parties' mere opinions concerning the permissibility of divorce will not affect the validity of the marriage. The determination to resort to divorce by only one party suffices. The agreement or determination must have been made prior to marriage, and in writing or before witnesses, to produce effects in the external forum.

Conditional consent— The Church permits that marriage be contracted conditionally for grave reasons. The fact *of* conditional marriage should be manifested to the pastor, for until the condition is verified, the parties arc forbidden to cohabit, and if they do not cohabit people will take scandal unless it is known that a conditional marriage was contracted. Naturally, only licit conditions will be manifested to the pastor. Seldom do such marriages occur. Most frequently, the condition remains a secret because it is illicit, but unless it was made prior to marriage and in writing or before witnesses so that proof thereof may be given to the court, the marriage always remains valid in the external forum of the Church.

Resolutive conditions are not admitted by the Church, even though they concern something licit in itself, for this is opposed to the indissolubility of marriage. A resolutive condition is one where the *termination* of the marriage is made to depend upon the verification of some happening, e.g., *I will marry you as long as you remain a Catholic.* Suspensive conditions arc those where the *commencement* of the marriage is made to depend upon the verification

of some happening. Concerning these suspensive conditions, c. 1092 rules as follows:

Future conditions, *if* they concern something necessary, impossible, or dishonest, must be regarded as non-existent, the law presuming they were added through levity. If they are contrary to the substance of marriage, they invalidate marriage, e.g., the exclusion of indissolubility. In all other cases they suspend the beginning of the marriage until the condition is, or is nut, verified, e.g., *if my parents consent.*

Past or *present* conditions, namely, those which concern some past or present event or fact, leave the marriage valid or invalid, depending upon whether the condition is, or is not, verified at the moment marriage is contracted.

§3. Deficient Freedom

Marriage consent, finally, may be invalid even though there is no ignorance or error, and even though the party intends to marry. This happens when unjust moral force in the form of blows and threats are used to extort his consent. In the passive agent we have grave fear. Whether we say the marriage is invalid through grave and unjust force in the active agent, or through grave fear in the passive agent, is immaterial, they being one and the same thing at this place. Force and fear arc correlative terms.

In canon law grave fear unjustly inspired by a free external agent in order to extort marriage consent invalidates marriage; no other fear does this (c. 1087).

(I) The fear must be *grave.* It can be absolutely grave or relatively grave, and either one will invalidate marriage. Fear is *absolutely* grave which suffices to overcome the mind and will of a firm and steadfast man, because of the grave losses he would otherwise suffer, losses which arc considered absolutely grave in themselves, such as loss of life, limb, fortune or liberty. *Relatively* grave fear is that which suffices to overcome the mind and will of this or that individual in view of his or her frailty. Thus, what is called *reverential* fear, or the fear of offending one's parents or superiors, could amount to grave fear, namely, if there were extreme severity in the active agent and extreme sensitiveness in the passive agent.

(2) The fear must be *unjustly* inflicted. This excludes fear proceeding from natural events, and requires that it proceed from a free external agent. Moreover, the human agent must be violating justice in demanding marriage. A judge does not inflict fear

on a young man unjustly if he threatens imprisonment unless the man either marries the girl whom he seduced or pays for the support of the child. But the girl's relatives have no right to threaten him with bodily harm, and if the man marries the girl to escape these threats, because they arc unjust, the marriage will be invalid. At the most they can justly threaten to bring a lawsuit against him. And if in the face of this threat, he marries, the marriage is valid.

(3) It is required that marriage be the only escape from the threats.

Books of Special Reference

Rimlinger, Herbert T., *Error Invalidating Matrimonial Content,* C. U. Press, 1932.

Sangmeister, Joseph V., *Force and Fear as Precluding Matrimonial Consent,* C. U. Press, 1932.

Timlin, Bartholomew, *Conditional Matrimonial Consent,* C. U. Press, 1934.

Bouscarcn, T. L. *Canon Lato Digest,* I, pp. 517-539 (for reported Rota cases illustrating the law on matrimonial consent), Milwaukee; Bruce, 1942.

Doheney, William J., *Procedure in Matrimonial Cases,* pp. 498-644 (for Rota cases and sentences illustrating the Code law on marriage consent), Milwaukee; Bruce, 1937.

Griese, Orville N., *Marriage and the Procreation of Offspring,* C. U. Press, 1946.

Articles and Consultations

Marriage and insanity, ER. 1939, Oct. 325-343; CST. II, 177.

The mentally affected and valid marriages, HPR. 1923, Aug. 1192.

Fraud in marriage, ER. 1922, Jan. 42-51.

Bride deceives groom into marrying hcr, CST. II, 166.

After marriage he discovers bride is not rich but a mere adventuress, CST. IV, 75.

Must pregnancy by another be revealed to the groom? CST. IV, 259; HI, 254.

Girl deceives groom who marries through fear of civil law consequences, HPR. 1928, Dec. 302.

A forced marriage, CST. II, 163.

How reverential fear arises and how it is proved, CST. Ill, 122.

A case of reverential fear, CST. IV, 253; V, 272.

Do insincere pre-nuptial promises invalidate marriages on grounds of fraud or unverified condition? ER. 1935, Jan. 72-75; 1934, Nov. 446-459; HPR. 1924; Aug. 1177; 1925, Jan. 405; 1934, Feb. 518-520.

Insincere pre-nuptial promises must be proved by a formal trial, HPR. 1933, Apr. 742; Oct. 74.

Rota case which annulled a marriage because of unfulfilled pre-nuptial agreement, HPR. 1923; Feb. 523.

Mental reservations regarding offspring, ER. 1930, Jan. 71.

Limiting the offspring, HPR. 1931, Oct. 70.

Thcv will use contraceptives for limited time, HPR. 1931; July 1097.

The.v intend not to have children, HPR. 1938, Dec. 286.

Thcv agree to use the rhythm system, HPR. 1940, May 891-894.

Thev agree to raise the children non-Catholics, HPR. 1931, Mar. 630.

Are most Protestant marriages invalid because of implied understanding on divorce? HPR. 1938, Dec. 281-283.

He reserves the right of divorce, CST. Ill, 81.

Limiting the time and number of offspring, CST. V. 252.

Some practical questions on c. 1086, §2, ER. 1928, Oct. 402-408.

A dissertation on vitiated marriage consent, ER. 1939, June 481-497; July 31-49; Aug. 131-149.

How invalidating conditions to marriage are proved, CST. V. 244.

Discovering pre-nuptial invalidating conditions after marriage, ER. 1930, Jan. 71.

Marriage on condition: If you become and remain a Catholic, HPR. 1933, Nov. 186-189.

ART. VI

Solemnization of Marriage

We shall speak of the juridical, and then of the liturgical form of marriage.

- §1. Juridical Form of Marriage

By the juridical form of marriage we mean that form which is required by law for the validity of a marriage. This includes the presence of the parties, witnesses, and the local Ordinary, pastor, or delegated priest (c. 1094).

Concerning the parties to the marriage it is necessary that they be present in person or through a proxy, and that they express their consent by words not using equivalent signs if they can speak (c. 1088). To contract marriage through a proxy it is necessary in canon law that the principal authorize this in writing, designating the proxy, and signing the document of mandate. Moreover, this document must be countersigned by the pastor, or the local Ordinary, or a priest delegated by either of these, or by two witnesses (c. 1089). The civil law concerning the permissibility of marriage by proxy, and the formalities prescribed therefor should also be observed, at least for civil law recognition and effects.

The parties are not forbidden to use an interpreter. But in this case, as also in the case of marriage by proxy, the permission of the local Ordinary must be obtained if time permits (c. 1090-1091).

Concerning the witnesses, the Code in c. 1094 prescribes that they must be at least two in number. No special qualifications arc set down, and so it seems that it suffices that the witnesses have the use *of* reason, and are present to the extent that they can testify that the parties exchanged consent before the priest. Some would debar non-Catholic witnesses, on the general principle that non-Catholics should not be admitted to participate with Catholics *in sacris.* The validity of this argument can be questioned since the witnesses merely assist passively at the administration and reception of a sacrament. At any rate, in marriages contracted with a dispensation from the impediment of disparity of cult there would be no sacrament, and the argument could not extend to that case.

Concerning the assistance of the *authorized* witnesses, i.e., the local Ordinary, the pastor or their delegate, we must distinguish between valid and licit assistance.

A. *Valid* Assistance of the Priest

Only those marriages arc valid which are contracted before the pastor, the local Ordinary, or a priest delegated by either of them, and before two witnesses (c. 1094).

To assist validly, the pastor must be in his parish at the time of the marriage, and in that case he assists validly at all marriages,

both those of his subjects and those of non-subjects. But the pastor cannot leave his territory and witness the marriage even of his own subjects in another parish, e.g., in a hospital situated in another parish, without delegation from the local Ordinary or the pastor of that territory (c. 1095, §1, n. 2).

Equivalent to pastors are.: the administrator of a vacant parish (c. 473, n. 1); the vicar substitute who takes the place of the pastor when the latter absents himself longer than a week (c. 474; Code Comm., July 14, 1922; *Acta* XIV, 527); the vicar adjutant if he has full charge of the parish (c. 475, §2; Code Comm., May 20, 1923; *Acta* XVI, 114). Hence,whatever is said in this article about pastors must be applied to the priests just listed.

The pastor may delegate any priest to assist validly at a marriage, provided the marriage takes place within the parish of the delegating pastor (c. 1095, §2). The delegation must be given to a specified priest for a specified marriage, otherwise the delegation is not valid. However, assistant pastors *(vicarii cooperatores)* may be given general delegation to assist at any marriage that may come up, but only within the parish to which they have been assigned (c. 1096). The delegation is not sufficiently specified if a pastor informs the religious superior that he delegates that priest to assist at a certain marriage the following Sunday in the mission church whom the superior will send (Code Comm., May 20, 1923; *Acta* XVI, 115). To avoid this pitfall let the pastor delegate the superior himself to take the marriage, granting him at the same time powers to subdclegate one of his subjects; or let the superior mention the name of the priest who will supply so that the pastor may then and there delegate him.

Assistant pastors have not in virtue of their office the right to assist at marriages. They must receive explicit delegation to that end, either from the pastor or the local Ordinary, e.g., in their letters of appointment, or from the diocesan statutes (Code Comm.; *Acta* 1942, 50).

Assistant pastors who have received general delegation to witness marriages, may subdelegate another specified priest to assist at a specified marriage (Code Comm., Dec. 28, 1927 ; *Acta* XX, 61). A priest who has received delegation for a specific marriage only, may not subdelegate his powers, unless this was *expressly* permitted by the delegating authority (c. 199, §4).

B. *Licit* Assistance of the Priest

Supposing the requirements of valid assistance arc verified in a given case as just described, it is furthermore required for licitness

that the parties be the subjects ol the pastor, whether the latter personally witnesses the marriage, or his delegate. In the matter of marriage it is not required that the parties have a domicile or quasi-domicilc in the parish, but it suffices that they have sojourned in the parish at least a month (c. 1097, §1, n. 2).

If the parties belong to different parishes, the rule is that the bride's pastor has prior rights, unless a just cause excuses from observing this precept (c. 1097, §2).

If the parlies belong to diifercnt Catholic rites, the groom's rite and pastor should be preferred (c. 1097, §2), unless particular law rules otherwise as with the Greek Ruthenians in the U. S.

The pastor, or his delegate, may assist at the marriage of non-subjects if he has received permission (not delegation) from the proper pastor of the parties, or from the pastor of the bride preferably. If he obtains permission from the proper pastor, he may keep the stolefee, unless permission was granted with the clause *reservato jure stolae*. He must restore the stolcfce if neither party was his subject, and if he failed outside of a grave necessity (c. 1097, §1, n. 3) to obtain permission of the proper pastor, or of either proper pastor *if* the parties belonged to different parishes (c. 1097, §3).

C. Valid Marriages Without a Priest

?\n exceptional form of marriage is that which is described in c. 1098. When neither the local Ordinary, nor the pastor, nor their delegate, can be approached, or can come, to assist at marriage, a marriage is valid before two witnesses alone: (1) in danger of death; (2) outside of such danger if it can be prudently foreseen that neither the local Ordinary, nor the pastor, nor a priest delegated by them, can be approached, or can come, to assist at the marriage within at least a month.

D. Persons Held to the Canonical Form

The priest who assists at a marriage need seldom inquire whether the parties are bound to observe the canonical form of Catholic marriage. It is especially after a civil marriage has taken place, and the parties obtain a divorce, and wish to have the former marriage declared invalid by the Church authorities because of lack of canonical form, will it be necessary to inquire whether they were held to observe the canonical form of marriage. Hence, it may suffice to state in general terms at this place that only those who have been both baptized and reared in the Catholic faith arc held to the form above described (c. 1099; also literature below).

§2. Liturgical Form of Marriage

Mixed marriages—Here all sacred rites are forbidden, unless the local Ordinary allows one or the other ceremony to avoid graver evils (cfr. c. 1102). Hence (where the law is enforced), no stole, nor surplice, nor the blessing of the ring, nor the recitation of prayers is allowed, although an exhortation may be given. The parties simply exchange consent in the presence of the priest and two witnesses, the special formula being found in the average ritual printed for the American clergy. The banns of marriage are not published (c. 1026).

Catholic marriages—Outside of the case of necessity, e.g., danger of death, when the bare essential ceremony suffices, the priest asking the parties separately: *Do you,* N. N., *take* Λ'. Λ'. *for your lawful husband (wife)* ? and the parties each responding in the affirmative, and the priest adding: *I pronounce you man and wife,* marriage ought to be celebrated according to the rites prescribed in the liturgical books. This includes besides the asking and receiving of the consent of the parties as described in the ritual, marriage at Mass and the nuptial blessing. But neither the Mass nor the nuptial blessing is required for the validity of marriage, nor arc they strictly perceptive by common law, although the spouses should be exhorted to assist at Mass, and to receive the nuptial blessing (c. 1101). The latter consists of three prayers found in the Missal, and included in the *Missa pro sponsis,* namely: *Propitiare, Domine,* and *Deus, qui potestate,* which arc both said over the spouses at the conclusion of the Pater Noster of the Mass; the third prayer being, *Deus Abraham,* said before the *Placeat tibi* at the end of the Mass.

Although the nuptial blessing is forbidden during the closed seasons, namely, from the first Sunday of Advent to Christmas, and from Ash Wednesday to Easter (c. 1108, §2), still marriage itself is not forbidden during those seasons.

The nuptial blessing being intended principally for the bride, as can be ascertained from its formula, it may not be given to a widow who received the blessing in her first marriage (c. 1143). This rule is probably intended to discourage second and further marriages, since the preceding canon states that while such further marriages are not forbidden, yet chaste widowhood is to be preferred (c. 1142).

Marriage of conscience—The Mass, nuptial blessing and other public ceremonies are dispensed with in a marriage of conscience. This is not to be confused with a mere quirt marriage made possible by a dispensation from the banns. A marriage of conscience is

one where not only are the banns dispensed with, but the marriage is contracted with the obligation of *secrecy* on the part of the local Ordinary, the officiating minister, the witnesses, and the parties, so long as the latter desire the marriage to remain a secret. A grave reason is required for a marriage of conscience, e.g., unjust and violent opposition of the parents, disgrace to the family should the marriage become known, difficulties of the civil law, etc. Only the local Ordinary may permit such marriages. The reason is that they are fraught with dangers, an existing marriage may remain undetected since the banns are omitted and no one knows of the present marriage except the parties and witnesses, the priest and the local Ordinary; the children may possibly not be baptized, or baptized under fictitious names without having their true names later recorded at least in the secret diocesan archives, etc. (cfr. c. 1104-1106).

Time and place of marriage— Marriage may be contracted any day of the year, and at any time of the day by common law, although the spouses are to be exhorted to marry at Mass, as we said (c. 1108, 1101). If diocesan statutes forbid marriage on Sundays, or in the evening, they should be observed.

Marriage should be celebrated in the parish church, or, by permission of the pastor, in a public or semi-public oratory. Only the local Ordinary may permit marriage in private homes, or in the churches or chapels of seminaries and religious communities of women (c. 1109, fl, 2). Mixed marriages arc to take place outside of church (c. l 109, §3). With us they have until very recently taken place in the parlor of the recton', never in the church.

Registration of marriage— Every marriage must be recorded in the marriage register of the parish where it was celebrated. Moreover a note of the marriage must be entered in the baptismal register of the parish where the parties were baptized, i. c., in the margin, and on the page where their names appear. If the marriage and baptism parishes differ, the pastor, or his delegate, who witnessed the marriage should send notice thereof to the pastor(s) of the parish (es) where the parties were baptized (c. 1103). This latter is a serious obligation, and one until recently often overlooked. The law is designed to prevent the parties from contracting a second marriage should they attempt a new union after obtaining a civil divorce.

Code Comm. Interpretations of the Law on the Marriage Form

C. 109-1— The vicar substitute who replaces a temporarily absent pastor, as in c. 465, §4, outside of a case of emergency, can

validly assist at marriage after, but not before, the Ordinary approves of him as a vicar substitute. A religious vicar substitute needs only the approval of the local Ordinary, not the approval of his superior, to assist validly at marriages *{Acta,* 1922, 527).

C. 109-4—The supplying priest who, as in c. 465, §5, replaces an absent pastor in an emergency can validly assist at marriage even before the Ordinary's approval of his appointment by the pastor *{Acta* 1922, 527).

C. 1095, §2—The priests mentioned in the above two paragraphs as competent to assist validly at marriage can delegate a specified priest to assist at a specified marriage. Such delegation the administrator of c. 472 can also confer. Whether the same delegating power is found in the vicar adjutant of c. 475, and of the vicar cooperator of c. 476 will depend upon the amount of authority these have received from the local Ordinary, or the pastor, in general *{Acta* 1922, 527).

C. 1096—A vicar cooperator of c. 476, if he has general delegation to assist at marriages within the parish, can subdelegate any specified priest of his choice to assist at any specified marriage *{Ada* 1928, 61). The vicar cooperator can never assist at marriage in virtue of his office alone *{Ada* 1942, 50).

C. 1096—In delegating a priest to take a specified marriage, the pastor can authorize the same priest to subdelegate any other priest of his choice to take the said marriage *{Acta* 1928, 62).

C. 1096—Delegation for valid assistance is too vague if the pastor merely tells the superior of the neighboring religious house that he (the pastor) delegates that priest to take the marriage, booked for the coming Sunday, whom the superior will send to supply *{Ada* 1924, 115).

C. 1098—Marriage before witnesses alone is not valid just because the pastor is absent *hit et nunc.* It must be foreseen that the pastor, moreover, will not be available for another month *{Acta* 1925, 538).

C. 1098—Whether the inconvenience is on the part of the pastor or on the part of the nupturients is immaterial *{Ada* 1945, 149).

C. 1098—Physical absense of the pastor is required to justify marriage before witnesses alone, and mere moral absence does not suffice. Still, if the pastor is physically present, but cannot assist because of some grave inconvenience, this still is considered physical absence *{Acta* 1928, 120; 1931, 388).

C. 1098—It does not suffice that the parties merely believe that the pastor will not be available for another month *{Rota decisions,* vol. 18, p. 17).

C. 1099, §2—*Ab acatholies nati* includes persons born also of mixed marriages, one parent being Catholic, even though marriage by them was contracted with the necessary dispensation *{Acta* 1929, 573). It includes persons born of apostate Catholics *{Acta* 1930, 195). The above first answer is declarative and retroactive *{Acta* 1931, 388).

C. 1102—In mixed marriages not only is the *Missa pro sponsis* forbidden, but also any other Mass which, from circumstances, would incline one to the belief that the Mass is part of the marriage ceremony *{Acta* 1925, 583).

Books of Special Reference

Carberry, lohn D., *The Juridical Form of Marriage,* C. U. Press, 1934.

Dillon, Robert E., *Common Lazv Marriage,* C. U. Press, 1942.

Coburn, Vincent P., *Marriage of Conscience,* C. U. Press, 1944.

Miklosovic, Paul J., *Attempted Marriages and Their Consequent Juridic Effects,* C. U. Press, 1944.

Dodwcll, Edward J., *The Time and Place for the Celebration of Marriage,* C. U. Press, 1942.

Articles and Consultations

The Tametsi Decree in the U. S., ER. 1926, Dec. 657; Jurist, 1943, Apr. 318-326.

The Benedictine Declaration as it applied to the U. S., ER. 1927, Nov. 526-527.

National parishes and assistance at marriage, ER. 1929, Jan. 88-94; HPR. 1941, Oct. 70.

Marriage performed by a deacon, HPR. 1923, Apr. 731- 733.

Parties object to witnesses at validation of marriage, invalid by reason of occult impediment. HPR. 1932, Mar. 636.

Can the deaf witness a marriage? HPR. 1935, Apr. 744.

Non-Catholic witnesses at Catholic marriage, ER. 1929, May 516; HPR. 1930, Aug. 1211-1212.

Ecclesia supplet and marriage, ER. 1940, Nov. 474; HPR. 1932, Nov. 179; 1940, Nov. 166; Jurist, 1942. Apr. 170.

Dispensation from the canonical form in danger of death, HPR. 1921, Nov. 170.

Discovery of concubinage at sick call, but quarantine forbids admission to witnesses, HPR. 1922, Oct. 13.

A *casus perplexus* and the canonical form, ER. 1938, Aug. 174-177.

Common law marriage between non-Catholics, ER. 1937, Feb. 182-188; ER. 1945, Mar. 227.

A common law marriage, HPR. 1927, Jan. 416.

Common law marriage and the Code, Jurist, 1942, July, 248-262.

Pastor assists fictitiously to leave marriage invalid. HPR. Apr. 1929, 773-775.

Aged pastor forgets to ask: "Do you take, etc.", and couple later divorce and seek new alliances on that plea, CST. IV. 176.

Delegation to take a marriage, HPR. 1920, Oct. 40-43; 1924. Aug. 1161-1164.

Was delegation to assist only implied here? Jurist 1946, Oct. 525.

Delegating all priests of nearby monastery to take a marriage, ER. 1936, Aug. 196

Must permission to assist be expressed? ER. 1939, Apr. 346-349; HPR. 1924, Sept. 1285.

The vicar substitute and marriage, ER. 1945, June 469-472.

A case of delegation to assist at marriage, HPR. 1930, Aug. 1213-1215.

Could jurisdiction for marriage be subdclcgatcd here? CST. Ill, 66.

Pastor forbids assistant to subdelegatc marriage faculties at any time, HPR. 1929, Nov. 175.

The law on licit assistance, ER. 1943, Feb. 116-125.

Licit assistance'at marriage, ER. 1919, Oct. 449.

Assisting at marriage without permission, ER. 1930, Nov. 525-532.

A case of both domicile and quasi-domicile, F.R. 1939, May, 441-443.

Business place not a domicile, ER. 1940, Oct. 395.

Acquiring domicile and quasi-domicile for marriage, CST. IV. 84.

A case of quasi-domicile and assistance at marriage, HPR. 1921, July, 931-933.

Domicile and place of work, HPR. 1930, April 750.

Is this domicile and quasi-domicile? HPR. 1928, .Mar. 645.

Arc there two domiciles here? HPR. 1929, Dec. 296.

Can groom's pastor assist here? HPR. 1941, Apr. 745.

Groom's pastor assists over objection of bride's pastor, HPR. 1938, Jan. 413-414.

Assisting at marriage of non-subjects, ER. 1931, Sept. 306-308.

Performing marriage for two non-Catholics, ER. 1944, Oct. 308-310.

Can a Latin pastor marry two Uniates? HPR. 1938, Sept. 1294-1296.

Marriage ceremony between Catholics of mixed rite, ER. 1925, Sept. 311-314.

Who judges if groom's pastor may take marriage? ER. 1920, June 691; Oct. 417-419.

Case of moral impossibility to have a priest, ER. 1927, Oct. 424.

Marriage without priest due to disturbed political conditions, HPR. 1920, Oct. 26.

Marriage is contracted before witnesses only, without priest, CST. V. 287.

Case of marriage before witnesses only due to civil law involvements, HPR. 1926, May, 858-860.

Prolonged absence of priest and canon 1098, HPR. 1927, Sept. 1317.

Marriage before witnesses only, HPR. 1928, Sept. 1333.

Can the priest advise a merely civil marriage? HPR. 1930, Nov. 187-189.

Is a civil marriage permitted for civil law effects only? HPR. 1942, July 952.

Was the Roumanian bound bv the canonical form? ER. 1928, Nov. 539-541.

If they marry *inter sc* persons baptized in the Catholic religion but not raised Catholics arc not held to the canonical form, ER. 1930, May, 507.

Born of Catholic parents, baptized a Catholic, but after five years raised a non-Catholic, ER. 1940, Sept. 283-286.

Baptized Catholic, raised non-Catholic, and held to canonical form, ER. 1943, Dec. 453-456.

Those Orientals who arc held to no canonical form can validly marry persons born as Catholics and raised as non-Catholics, Jurist, 1942, Oct. 399.

Discussion of the *ab acatholicis nati* declaration, ER. 1931, Dec. 637-638.

Do declarations concerning *ab acathoiics nati* apply to pre-Code marriages? ER. 1936, Feb. 188-189.

Baptized a Catholic, raised a non-Catholic, marries an infidel, is divorced, and desires marriage with a Catholic, HPR. 1934, Oct. 82.

Children of apostate Catholics and the marriage form, ER. 1931, May 522-524.

What is meant here by apostacy? ER. 1936, June 630-633.

Various suppositions of children born of Catholics and not held to the canonical form, HPR. 1932, May 852-856.

Is nuptial Mass obligatory? ER. 1923, Feb. 192.

Closed seasons and the nuptial Mass, ER. 1925, Apr. 415; 1924, Aug. 195; HPR. 1923, Feb. 523; 1926, Mar. 632; 1926, May 850.

Solemn Mass at wedding during closed seasons, ER. 1925, Dec. 633.

What solemnities are forbidden during closed seasons? HPR. 1924, Apr. 671.

Nuptial blessing outside of Mass, ER. 1929, Mar. 310.

Nuptial blessing apart from wedding, HPR. 1935, Nov. 185.

How to give nuptial blessing, CST. IV, 105.

The double ring ceremony, ER. 1944, Oct. 311.

Nuptial jubilee, how celebrated, ER. 1922, May 524; HPR. 1926, Mar. 634.

Cassock can be worn at mixed marriages, IIPR. 1921, Aug. 1054.

Can marriage be celebrated at Benediction? HPR. 1935, Sept. 1308.

Performing marriage at rail outside of Mass, ER. 1937, Apr. 422.

Mixed marriage in church, ER. 1925. Dec. 623-624.

Marriage in convent school chapel, HPR. 1920, Dec. 203-204.

Can bishop permit mixed marriages outside of rectory? HPR. 1941, June 938.

Who enters the marriage record? ER. 1926, Oct. 434.

ART. VII

Separation of the Spouses

We shall first consider separation, or divorce, from the bond; and then separation from bed and board.

§1. Separation from the Bond

Not every marriage, though valid, enjoys the same degree of indissolubility. From this viewpoint we may distinguish: (1) sacramental consummated marriages; (2) unconsummated marriages; (3) consummated non-sacramental marriages.

A. Sacramental Consummated Marriages

A sacramental marriage (between two baptized persons), once consummated, cannot be dissolved except by death (cfr. c. 1118). Every other marriage admits of dissolution for reasons other than death *of* the spouse, as we shall sec. Proof of the absolute indissolubility of a sacramental consummated marriage, as based upon divine law, must be left to manuals of dogmatic theology.

B. Unconsummated Marriages

A marriage between two baptized persons, or between a baptized and an unbaptized person, is dissolved by law through solemn religious profession, although an Apostolic induit is required for a married person to enter a religion during the lifetime of his spouse (cfr. c. 542, n. 1). But the more frequent way in which a marriage as just described is dissolved, is by Apostolic dispensation granted for a just cause at the request of both parties, or of one party only, even though the other be opposed to the dispensation (c. 1119).

Whether the dissolving power is attached to solemn vows by divine or ecclesiastical law is disputed. By what authority the Pope can dissolve an unconsummated marriage is explained on p. 630.

As to the procedure followed before a dispensation is granted from the bonds of a *matrimnnium ratum et non-con$ummatum,* cfr. p. 628.

C. Consummated Non-Sacramental Marriages

A non-sacramental marriage is one which exists between two unbaptized persons, or between a baptized and an unbaptized person. If both parties are unbaptized, the marriage, even though consummated, can be dissolved in virtue of the Pauline Privilege. If one party is unbaptized and the other is a baptized non-Catholic, and one party becomes a Catholic, the marriage can be dissolved in favor of the faith by vicarious power of the Sovereign Pontiff. We shall consider each of these cases separately.

Pauline Privilege—In his first epistle to the Corinthians (V'lI, 12-15) St. Paul writes: "If any brother hath a wife that believeth not, and she consent to dwell with him, let him not put her away.

And if any woman hath a husband that believeth not, and he consent to dwell with her, let her not put away her husband. . . . But if the unbeliever depart, let him depart. For a brother or sister is not under servitude in such cases."

By *brother* and *sister* St. Paul means a Christian man and woman, those who have received baptism. But he intends converts alone, as the Church through her practise teaches. St. Paul means to say that *if* marriage was contracted by two unbaptized persons (unbelievers), and one of them is now converted to the Christian faith (brother, sister), and the unbaptized consort consents to live with the convert without molestation to his or her new faith, the convert should continue to live with him. But if the unbaptized party departs, i. c., cither by physical desertion, or morally by making the practise of the faith difficult for the convert, the latter may also depart, i. c., enter upon a new marriage with a Christian.

Hence, the Pauline Privilege is simply the right of a convert, man or woman, to contract a new marriage should the unbaptized consort to whom the convert was married in infidelity, i. e., while yet unbaptized, refuse to be baptized likewise, or at least to live peacefully with the convert. The dissolution of the first marriage contracted in infidelity, even though consummated, is dissolved at the moment the convert contracts a new marriage (c. 1120, §1; 1126).

Before the Pauline Privilege can be applied the following conditions must have been verified: (1) the first marriage must have been contracted in infidelity, i. c., between two unbaptized persons; (2) one party must have embraced the faith through baptism, the other still remaining unbaptized; (3) the unbaptized person must have departed, either physically, c. g., bj' divorce or desertion, or morally, e. g., by making common life unbearable by reason of a quarrelsome disposition, opposition to the baptism and Catholic education of the children, insistence on onanistic practises, etc., in a word by any mode of life which endangers the faith or morals of the convert and makes the practise of his new religion difficult; (4) the departure of the infidel must be verified by means of interpellations.

The interpellations are two questions proposed to the unbaptized consort: 1) whether he also is willing to receive baptism; and if not 2) whether at least he is willing to leave the convert undisturbed in the practice of the Christian faith. If the unbaptized consort has already physically departed, c. g., by reason of divorce, the second question should be whether he is willing to return and live peacefully, etc. (cfr. c. 1121, §1).

The interpellations must always be made, no matter how evident it may be that the infidel has departed, unless the Holy See dispenses (c. 1121, §2). The local Ordinaries of the United States have no faculties to dispense in these cases by law.

If the interpellations were dispensed with by the authority of the Holy See, or if they were made and a negative (even silent) answer was given to them, the convert may enter upon a new marriage (c. 1123).

If the convert after baptism continues to live with the infidel, he does not thereby forfeit his right later on to resort to the Pauline Privilege if circumstances warrant (c. 1124).

In cases of doubt the privilege of the faith enjoys the favor of the law (c. 1127). Thus, if it is doubted whether the first marriage was invalid, it may be presumed invalid; whether the interpellations were properly made and reached the infidel, they may be presumed as having been properly made, etc. But if two doubtfully baptized non-Catholics contracted marriage, and one joins the Church and is baptized and wishes to use the Pauline Privilege, this cannot be done for fear that the first marriage may have been sacramental and consummated. And if of two non-Catholics one was certainly unbaptized and the other doubtfully baptized, the convert cannot be permitted the use of the Pauline Privilege, but recourse must be had to the Holv Office in each case (H. Off. June 10, 1937; *Jeta* XXIX, 305).

Concerning the method of procedure in Pauline Privilege cases, cfr. p. 628.

Dissolution by vicarious authority of the Sovereign Pontiff— Marriage between two persons, one of whom is baptized and the other unbaptized, cannot be dissolved in virtue of the Pauline Privilege. But if either party embraces the Catholic faith, and if the bond of the first marriage would make the practice of the faith difficult for the convert, e. g., if they are divorced civilly and the convert because of youthful age finds it hard to lead a continent life, the first marriage, even though consummated, can be dissolved by the Roman Pontiff in virtue of his authority as vicar of Christ upon earth, i. c.. by the same authority by which he dissolves unconsummated marriages, an authority conferred upon the Pope through St. Peter to whom it was said: *Quidquid solveris super terram erit solutum et in coelis.* This loosing power must be understood as extending not only to sins but to anything that would obstruct salvation, even to the bond of marriage. But *ratum et consummatum* marriages are expressly excepted, for if to any marriage, then certainly to such

marriages do the words *of* Christ apply: *"What God hath joined together, let no man put asunder."*

Concerning the procedure to be observed in requesting a papal dissolution of the marriage under consideration, cfr. p. 630.

D. Declaration of Nullity

Dissolution *of* the marriage bond supposes that a valid marriage existed, otherwise there is no bond present to be dissolved. Hence if the parties contracted an invalid marriage, and after obtaining a civil divorce, either or both desire to enter upon a new marriage in the Church, the case calls for a declaration of nullity, not for a dissolution. Sometimes a formal marriage trial is required, especially in defective consent cases, and impotency cases; at other times a summary process as described on p. 626 generally suffices.

It should be repeated that no priest may assist at the marriage of divorced persons without first submitting the first marriage of these parties to the bishop, or the diocesan court, for a declaration of nullity, or for an authoritative dissolution. And if neither a declaration of nullity nor a dissolution is possible, the divorced persons cannot enter upon a new marriage in conscience, and in the Church.

§2. Separation from Bed and Board

By limited divorce, as distinct from absolute divorce, we understand the separation of the spouses not from the bonds of their marriage, but from bed, board and common habitation. Such divorce does not permit the parties to contract a new marriage.

One of the obligations inherent in the marriage contract is common habitation, this being essential to the exercise of marital rights, or the *jus copulandi.*

But a just cause will permit separation from bed, board and habitation. As a rule it is not for the parties, but for the bishop, to judge concerning the sufficiency of the cause which justifies separation. A summary extrajudicial decision suffices (Code Comm., June 25, 1932; *Acta* XXIV, 284). Not even the confessor can pass judgment which will excuse the parties in the external forum, if the separation would cause general talk and scandal. Such scandal is not present, or at least it is not justifiable scandal, if the cause of the separation is both serious and publicly known, and if it is known that the bishop has authorized the separation.

Canon 1129 considers adultery as justifying *permanent* separation for the innocent spouse. Causes which justify *temporary*

separation, i. e., as long as the cause lasts, are, c. g., if one spouse joins a non-Catholic sect; educates the children as non-Catholics; leads a criminal and ignominious life; endangers the life of the other, or tempts the other repeatedly to sin, c. g., by birth control practises; renders common life a hardship by constant quarrels, etc. (c. 1131, §1).

While, if there is danger in delay, the innocent spouse may usually leave on his own accord without waiting for episcopal approval, yet if the separation is to continue for any length of time, and especially if a civil divorce is to be sought to safeguard the temporal goods of the innocent party, the right to alimony, etc., the bishop must be consulted. In many dioceses it is a reserved sin by local law for Catholics to sue for a civil divorce without previous permission of the bishop.

Canon 1132 rules that the children should be given to the innocent spouse in case of separation, unless the Ordinary judges otherwise for the good of the children, e. g., if the innocent party is a non-Catholic. But in practise it will be the civil court which will arrogate to itself this right to decide who shall have the children, a right which belongs to the ecclesiastical prelates, but which is not recognized where separation of Church and State prevails, as with us.

Books of Special Reference

Gregory, Donald J., *The Pauline Privilege,* C. U. Press, 1931.

Woeber, Edward M., *The Interpellations,* C. U. Press, 1942.

Burton, Francis J., *A Commentary on Canon 1125,* C. U. Press, 1940.

Woods, Francis, *The Constitutions of Canon 1125,* Milwaukee: Bruce, 1935.

Kearney, Francis P., *The Principles of Canon 1127,* C. U. Press, 1942.

Articles and Consultations

A ratum et non-consummatum case, CST. I, 155.

The marriages of infidels and their annullability, ER. 1918, Mar. 318-320.

One turns Catholic, the other becomes a Protestant—is Pauline Privilege applicable? HPR. 1934, Oct. 80.

Three cases of the Pauline Privilege, ER. 1925, 301-304.

Should Pauline Privilege or disparity of cult apply? ER. 1927, fan. 44-52; Feb. 210; Mar. 322; May 543; June 656-659; HPR. *1925, Nov. 188; Dec. 403; 1928, Dec. 303.

Insincere conversion and the Pauline Privilege, HPR. 1929, Oct. 66; ER. 1929, Sept.

Pauline Privilege docs not apply here, HPR. 1922, Mar. 642-644.

Where the Pauline Privilege applied, HPR 1922, May 903-905.

Dispensing from interpellations, HPR. 1921, Aug. 1055; 1933, May 852.

Can Ordinaries dispense from interpellations? ER. 1932, May 533-537; 1934, Nov. 503-506.

Can pastors dispense from interpellations? HPR. 1934, Sept. 1312-1315.

Malicious refusal to be interpellated, HPR. 1928, May 881.

Interpellations by telephone, HPR. 1932, July 1080.

The logic of interpellations, ER. 1946, July 24-36.

Confessor cannot apply Pauline Privilege to dying penitent, HPR. 1933, May 852.'

The original Helena Case, ER. 1925, Feb. 186-188; Apr. 405-409.

Dissolution of legitimate marriage by papal authority, Jurist, 1942, Apr. 134-144.

Theory or philosophy of *in favorem fidci* dissolutions, ER. 1924, Jan. 59-66; 1925, June 622-628; Jurist, 1942, Apr. 134-144.

The declaration on c. 1127 and its interpretation, ER. 1937 Oct. 366-372.

A dissolution *in favorem fidei,* HPR. 1932, Nov. 187-189.

Procedure in submitting privilege of the faith cases, HPR. 1939, Mar. 619-621; Oct. 39-51.

Bishop's permission required to sue for civil divorce, ER. 1938, Apr. 372; HPR. 1938, Jan. 411, July 1071; 1931, July 1101-1104.

Procedure in separation suits, HPR. 1929, Jan. 407.

Status of one who sues for civil divorce without bishop's permission, ER. 1941, Nov. 410-412; HPR. 1927, June 992.

Can spouses, who have separated without bishop's permission, approach sacraments? CST. IV'. 140.

Civil divorce and episcopal permission, ER. 1946, Nov. 388.

ART. VIII

Validation of Marriage.

An invalid marriage may be validated in either one of two ways; 1) by having the parties renew marital consent, and this we call *simple validation;* or 2) by dispensing the spouses from the obligation of renewing consent in the canonical form, i. c., before the priest and two witnesses, and then we have a *sanatio in radice.*

§1. Simple Validation

The rule is that marriage must be validated by means of simple validation. The *sanatio in radice* is an extraordinary method, and should not be resorted to except in cases of necessity. In other words, the parties should ordinarily be prevailed upon to renew their consent in canonical form after the impediment has ceased of its own accord (age, disparity of cult, etc.), or after a dispensation has been obtained from the invalidating impediment (c. 1133, §1). Sometimes, however, there is no impediment and a dispensation is not needed, e. g., if the marriage was merely contracted in the beginning before a justice of the peace, i. e., in disregard of the canonical form. Then the parties need but renew consent in canonical form.

We said the consent should be renewed in canonical form, i. e., before an authorized priest and two witnesses. However, not even this is required in all cases, although in all cases consent must be renewed. In other words, the manner of renewing consent will differ according to whether the marriage was rendered invalid due to: 1) the disregard of the canonical .form (civil marriages); or 2) defective consent; or 3) an invalidating impediment.

If the canonical form was neglected, e.g., in a civil marriage, the parties must renew consent before an authorized priest and two witnesses (c. 1137). It is not necessary that a church ceremony be gone through, but the marriage can take place privately, if there is danger of scandal, e.g., in the sacristy, priest's parlor, etc.

If marriage was invalidated by reason *of* vitiated consent, e.g.. because of a condition opposed to the substance of marriage, and it is publicly known that such pre-marital pact was entered into, or that at least one party so conditioned his consent, the parties must renew consent before an authorized priest and two witnesses. If the defective consent cannot be proved in the external forum, e.g., by an authentic document or by two witnesses other than the

parties, it suffices that the party or parties externally between themselves alone renew consent. And if only one party gave vitiated consent and is aware thereof, the confessor may tell him here and now to renew consent inwardly and *coram Deo* without the need of manifesting his lack of consent to his partner. Since these occult cases cannot be proved, the Church is not concerned about them in the external forum, nor could she declare the marriage invalid. And so, since the parties cannot be allowed a divorce on such grounds they may as well live rightly in a valid marriage and renew consent privately (cfr. c. 1136).

If the marriage was invalid due to an *impediment* which is now discovered (a relatively rare case), the consent must be renewed before an authorized priest and two witnesses if the impediment is public by its nature (can be proved). Otherwise the parties exchange consent between themselves alone. If the impediment is, or was, known to only one party, e. g., one learns from the confessor that his pre-marital adultery invalidated his marriage, only the party aware of the impediment need renew consent inwardly (c. 1135).

§2. Sanatio in Radice

The law which requires the parties to an invalid marriage to renew consent before the authorized priest and two witnesses is a ruling of positive ecclesiastical law only. Hence, the Church can dispense with this ruling, or obligation of renewing consent, if circumstances so warrant in some particular case, and such dispensation is called a *sanatio in radice,* i. e., the marriage is healed (validated) in its root (consent). The Church does not supply consent; she simply gives authoritative recognition to a consent already elicited. If a diriment impediment stands in the way, c. g., disparity of cult, this must be first removed, or it must have ceased of itself, e. g., age. If removed by a dispensation, as generally happens, the bishop in granting the *sanatio in radice* actually grants a two-fold dispensation: one from the diriment impediment, the other from the law requiring renewal of consent in the canonical form (cfr. c. 1138).

Since there is question of dispensing from a law whenever a *sanatio in radice* is granted, namely, from the law requiring renewal of consent in the legitimate form, a *sanatio in radice* will not be granted save for a just cause. Thus, it may happen that the marriage was invalid through the fault of the priest, he having no jurisdiction to witness the marriage, and it would be embarrassing to inform the parties thereof. Or, as most frequently happens, a

Catholic contracts a civil marriage with a non-Catholic, and later, repenting, wishes to have the marriage rectified, but the non-Catholic cannot be prevailed upon to renew consent in the Catholic form, being persuaded that one marriage ceremony suffices.

The Church does not grant a *sanatio in radice* if marriage was contracted with an impediment of divine law, even though the impediment has now ceased. This is a mere ecclesiastical ruling (cfr. Veremeersch-Creusen, o.*c.,* II, n. 457). And so, if a divorced Catholic contracted a civil marriage during the lifetime of his former spouse, and the latter dies, the second marriage must be validated by renewing consent before an authorized priest and two witnesses (c. 1139).

Neither does the Church grant a *sanatio in radice* in the case of a marriage invalid by reason of deficient consent. This is divine law, since no human authority can supply marriage consent other than the parties. If the defect in consent was public, the marriage must be gone through again before an authorized priest and two witnesses. If the defect was occult in the sense that it cannot be juridically proven in the external forum, consent must be renewed at least privately between the parties if known to both, or by one party only inwardly if he alone is aware of his deficient consent (c. 1140).

Only the Holy See can grant the *sanatio in radice,* i. e., such dispensations the Pope reserves to himself. But the local Ordinaries of the United States have quinquennial faculties to grant the *sanatio in radice* in cases of mixed marriages, and from impediments of minor degree (cfr. p. 726, 728).

It should be noted that the parties need not be told of the *sanatio* having been granted (c. 1138, §3). But the one who is aware of the impediment should be informed that the marriage was validated in this way, otherwise he may later attempt to seek a declaration of nullity. Likewise to frustrate this attempt, the *sanatio* must be duly recorded in the books of the chancery, and a note thereof sent by the chancery to the pastor of the parish where the party or parties were baptized, so that it may be recorded in the baptismal register on the margin of the page where the names appear. Absence of such marginal note is evidence that a civil marriage was not validated in this form; and if, moreover, the ordinary marriage celebration note is not found in the margin which would have been entered had the marriage been validated in the ordinary manner, parties married civilly may obtain a declaration of nullity to permit them to contract a new marriage.

Finally, let it be remarked that while a *sanatio in radice* produces no effect if the consent originally given to the marriage has been

recalled, yet the party conscious of the invalidity of the marriage need not question the other consort unaware of the invalidity whether his consent perseveres. The law presumes that marital consent, once given, continues until there is certain proof present that it has ceased (c. 1093). Hence, if the parties are not separated, this is sufficient presumption that consent perseveres, and the *sanatio* may be granted. But in some cases it may be better for the confessor or priest to advise a penitent to seek a declaration of nullity, rather than ask for a validation of his marriage, especially if there are no children, and the present union is an unhappy one.

Books of Special Reference

Brennan, James H., *The Simple Convalidation of Marriage,* C. U. Press, 1937.

Harrigan, Robert J., *The Radical Sanation of Invalid Marriages,* C. U. Press, 1938.

Articles and Consultations

Does any form of renewal of consent suffice for validation? 11PR. 1928, May 879.

Remarriage of validly married Catholics after civil divorce and reconciliation, ER. 1924, Nov. 523.

Must two converts renew marriage consent *if* their first and only marriage was valid? ER. 1927, Feb. 207-208.

Validating a convert's prc-Code marriage which was invalid by reason of disparity of cult, ER. 1936, July 91-96.

Procedure in validating the marriage of a dving person. ER. 1942, Aug. 134-138.

Insincere convert requests baptism on death bed; must marriage consent be renewed? HPR. 1935, June 969.

Discovers an invalid marriage before an operation. HPR. 1920, Oct. 38.

Valid in canon law, invalid in civil law because annulled at request of minor's parents. Quid faciendum? HPR. 1934, Feb. 516.

Cohabitation as brother and sister. ER. 1938, Oct. 319-337; HPR. 1926, July 1075; 1935, May 852; 1937, Sept. 1305.

Is sanation possible between two Catholics? HPR. 1931, July 1095-1097.

Sanation of mixed marriages without the promises, IIPR. 1920, Nov. 131-132; 1924, Apr. 742; 1928, Aug. 1217; 1928 Oct. 80-82.

Procedure to obtain a sanation in mixed marriages, ER. 1932, July, 73-76.

Refusal of a sanatio, HPR, 1926, Mar. 633.

The correct use of the sanatio, HPR. 1932, Aug. 1135-1142; Dec. 291.

Is a sanatio possible after separation and reconciliation? Jurist, 1942, Apr. 165.

Validating a convert's marriage without renewal of consent. Jurist, 1944, Jan. 142-150.

Sanation obtained for, and later refused by the petitioner—was the marriage validated? HPR. 1924, July 1066.

Sanation because marriage invalid through priest's fault, HPR. 1929, Nov. 169.

Why is a marriage contracted with an impediment of divine law, if the impediment has now ceased, excluded from the benefit of a sanation? ER. 1919, Sept. 324-326.

APPENDIX

The Sacramentals

General notions—Sacramentals are things or actions which the Church has instituted in imitation of the sacraments to produce chiefly spiritual effects (c. 1144).

They should not be confused with sacraments; the latter are of divine institution, the former of ecclesiastical origin; the latter produce grace *ex opere operato,* the former ex *opere operantis* (praesertim operante Ecclesia). The Church merely begs God through her ministers to bestow favors on the recipient or user *of* the sacramental, her prayers being more efficacious (not necessarily infallible) than the prayers of a private member of the Church.

Nor should sacramentals be confused with indulgences. An indulgence is the remission of temporal punishment due after the guilt of sin, i.e., its punishment in the next world, has been condoned. The spiritual effects of a sacramental may indeed include the effects of an indulgence by the will of God in some particular case, but the remission of temporal punishment is not an essential effect of a sacramental. We can have articles to which both in-

dulgences and sacramentals attach, e.g., a blessed rosary to which an indulgence was attached by the sign of the cross. On the other hand we can have an indulgence alone, e.g., in the case of an indulgenced visit to a church, or we can have a sacramental alone, e.g., a blessing imparted to a rosary by a priest not empowered to affix indulgences.

Kinds of sacramentals—Most sacramentals are either consecrations or blessings. Otherwise, which actions and things can be listed as sacramentals is much disputed among the writers due to the absence of a uniform definition of a sacramental save in generic terms. Authors usually add to blessings and consecrations, the public prayers of the Church, almsgiving, the recitation of the confiteor, and the sign of the cross.

Consecrations and blessings are either constitutive or invocative, depending upon whether according to the usage of the Church the thing consecrated or blessed is set aside permanently for sacred purposes, e.g., consecrated oils, blessed candles, holy water, etc., or not, e.g., the blessing of a private home, of fruit, etc. The former should not be applied to profane uses (c. 1150), e.g., should not be used to bathe with, nor blessed candles lighted to study by.

Sacramentals, we said, are either things or actions; thus, those things which receive a constitutive consecration or blessing constitute the permanent sacramental, God's blessing remaining with the retainer or user thereof; while in the case of things consecrated or blessed with an invocative blessing, the sacramental mostly consists in the transient action, i.e., the consecration or blessing.

Minister of sacramentals—Bishops are the ordinary ministers of consecrations (blessings with the use of oil), although some clerics by law and others by indult may consecrate. As to blessings (usually prayers accompanied by the use of holy water, although the mere sign of the cross is a blessing and sacramental), some are reserved to bishops, others to pastors, others to religious, as may be seen in the Ritual. One who without permission imparts a reserved blessing, however, confers a valid blessing (c. 1147).

Formalities to be observed—If a special formula is prescribed for a blessing, it must be observed under pain of invalidity of the sacramental (c. 1148, §2). The use of holy water, when prescribed, must be considered part of the formula (Vermeersch-Creusen, *o.c.,* II, n. 468). The use of stole and surplice, when prescribed, is not *ad validitatem*.

Beneficiaries of sacramentals—With the exception of those upon whom excommunication has been pronounced, all persons may re-

ccivc the sacramcntals, including non-Catholics (c. 1149). Hence, it is allowed, e.g., to bless the homes and children of non-Catholics. Catechumens may be admitted to the public reception of the candles, ashes and palms (S. C. Rites, Mar. 8, 1919; *Acta* XI, 144). This is forbidden in the case of other non-Catholics (Vcrmeersch-Crcusen, *o.c.,* II, n. 577).

Exorcisms— Lest ridicule result therefrom in this critical age, no priest may pronounce exorcisms over one supposedly possessed by the devil without previous permission of his Ordinary (c. 1151, §1). The exorcisms which occur in baptism are excepted (c. 1153).

Chapter IX

SACRED PLACES

Preliminary Remarks

Sacred places are those which have been set aside for divine worship or the burial of the faithful by' means of consecration or blessing performed in accordance with the rules found in the approved liturgical books (c. 1154). Consecration consists of prayers and the anointing with oil; blessing consists of prayers and aspersion with holy water.

It is the right of the local Ordinary, provided he is a bishop, to *consecrate* all places in his territory, even places belonging to exempt religious. If the local Ordinary is not a bishop, he alone may invite any bishop of his rite to consecrate places in his territory (c. 1155).

The right to *bless* places pertains to the major superior if the place belongs to an exempt clerical religion. Both the local Ordinary and the superior may delegate another priest to perform the blessing reserved to themselves (c. 1156).

Sacred places arc of four kinds: 1) churches; 2) oratories; 3) altars; 4) cemeteries. To the first three we shall devote a separate article in this chapter, reserving for the following chapter our treatment of cemeteries.

ART. I

Churches

We shall consider: 1) the definition and various divisions of churches; 2) the construction of churches; 3) the consecration and blessing of a church; 4) the maintenance and repair of churches.

§1. Church Defined and Classified

A church is a sacred edifice dedicated to divine worship, and intended primarily for the use of all the faithful (c. 1161). Church-

es differ from oratories not by reason of material size, but rather the distinction is purely juridical, namely, if the sacred edifice is not intended primarily for the use of all the faithful without distinction, it is an oratory or chapel; otherwise it is a church. Both churches and chapels agree in this that they are dedicated to divine cult.

In respect to their rights and privileges churches arc divided as follows: 1) a *cathedral* church is one in which the bishop has his *cathedra* or chair, where synods and general ordinations are held, and the blessing of the oils on Holy Thursday is performed; 2) a *parochial* or parish church is one in which parish functions, e.g., solemn baptisms, marriages, etc., can be performed; 3) collegiate and conventual churches are those in which the Eucharist can be reserved *ipso jure,* the former being entrusted to a chapter of secular canons, the latter to a religious organization; 4) a *basilica* is a church which enjoys this title by Apostolic induit or immemorial custom.

A note may be added concerning basilicas. Basilicas arc either major or minor basilicas. There are only six major basilicas. Four of these are at Rome: St. John Lateran, St. Peter's, St. Mary Major, and St. Paul outside the Walls. The other two are found in the town *of* Assissi: one is the church of St. Francis, the other is the church of St. Mary of the Angels. A number of minor basilicas arc found in various parts of the world, their privileges in general being: that in processions they may use a special canopy in the shape of an umbrella, a specially constructed bell which heads a procession, and special robes for the clergy of the church.

§2. Construction of Churches

No church, whether regular or secular, may be built without written permission of the local Ordinary. This permission should not be granted save under the following conditions: 1) that sufficient funds are at hand or can be expected, for the construction and upkeep of the church and for the maintenance of the clergy; 2) that the new church will not prove detrimental to the neighboring churches, and to this end the local Ordinary should seek the advice of the rectors of those churches; 3) that the plans arc in harmony with the traditional rules of Christian architecture, and to this end the local Ordinary may inspect the plans (c. 1162; 1164, §1).

§3. Consecration and Blessing of Churches

Necessity of consecration or blessing—Neither Mass nor any other sacred functions are permitted in a church before it is consecrated or at least blessed (c. 1165, §1). Churches constructed of wood can be blessed but not consecrated (c. 1165. §4).

Consecration is obligatory for all cathedral churches. It is desired that all collegiate, conventual and parochial churches be likewise consecrated (c. 1165, §3).

When a church is consecrated at least one altar of the church must also be consecrated, namely, the high altar, unless this has already been consecrated (c. 1165, $5).

Together with consecration or blessing a church must be given a title. The titular feast must be celebrated annually according to the rules of sacred liturgy. Also the anniversary of the consecration must be observed (c. 1167, 1168).

Loss of consecration and blessing—A church which has lost its consecration or blessing must be reconciled before divine services can be resumed therein. But here we must distinguish between the execration of a church and its violation.

A church is execrated: 1) if it is entirely destroyed; 2) if the greater part of its walls collapses; 3) if by the Ordinary's decree it has been turned over to profane uses (c. 1170). In such cases the church loses its consecration or blessing and must be reconciled by being consecrated or blessed anew to be a sacred place.

The violation of a church imports the contamination, not the loss, of its consecration or blessing. A church is violated by any one of the following acts: 1) by the crime of homicide; 2) by an injurious and serious spilling of human blood; 3) by addiction to ungodly and sordid acts; 4) by interment within the church of an infidel (unbaptized person), or of a person upon whom sentence of excommunication lias been passed. The last supposition is hardly verifiable at the present day when only bishops and cardinals are interred within the church, although we can imagine a patron enjoying the privilege of such burial. The above acts which violate a church must be certain, notorious, and placed within the church edifice itself (c. 1172).

A blessed church which has been violated is reconciled with common holy water according to the formula found in the ritual. A consecrated church which has been violated is reconciled by the use of specially blessed water and special prayers as contained in the Roman Pontifical (c. 1177).

A blessed church which has been violated can be reconciled by

the rector of the church, or by any other priest with at least the lawfully presumed consent of the rector. A consecrated church which has been violated may be reconciled by the local Ordinary or his delegate; and if the church belongs to an exempt clerical religion, by the superior or his delegate. In case of grave and urgent necessity, the rector himself may reconcile a consecrated church, supposing the Ordinary cannot be reached, but he must later inform the Ordinary of his action (c. 1176).

§4. Maintenance and Repair of Churches

The Code contains a number of rules under this head (c. 1182-1186) which find little application to conditions in this country.

By common law the maintenance and repair of the cathedral church devolve upon the following in the order named: 1) the temporal goods of the cathedral *(bona fabricae)*; 2) the salary of the bishop and cathedral canons; 3) the faithful of the diocese. In the case of parish churches the following are taxed in the order named: 1) the goods of the parish; 2) the patron; 3) those who derive an income from the parish; 4) the parishioners (c. 1186).

Canon 1186 allows local law and custom and the foundation law of the church, if there are any, to modify the rules just stated. In the U. S. the cathedral church, once it is built, usually through a drive on a diocesan scale, is cared *for* by the parishioners of the cathedral parish. In the case of other parishes, the church, pastor's residence, school, etc., arc constructed and maintained in repair, and the running expenses arc met by the free-will offerings of the parishioners in the form, c.g., of ordinary collections, pew rent, subscriptions, bazaars, etc.

It belongs to the pastor to administer the temporalities of the parish church, and he must give a yearly account of such administration to the local Ordinary (c. 1182, §3; 1525).

ART. II

Oratories

We shall consider: 1) the nature and various kinds of oratories; 2) the rights attaching to different kinds of oratories.

§1. Nature and Kinds of Oratories

An oratory (from *oratorium,* a place of prayer) is a sacred edifice destined for divine worship, but not intended primarily for

the use of all the faithful indiscriminately, as is the case with a church (c. 1188, §1). An oratory, called also a chapel, is constructed either for the use of an individual, or a group of individuals. This gives rise to various kinds of oratories.

There arc three kinds of oratories: public, semi-public and private oratories. A *public* oratory is one which all the faithful arc allowed to enter at the time of services, even though the chapel was built originally only for the convenience of an individual or a group of individuals. There are few oratories in this sense. A semi-public orator)' and a private oratory both differ from the public oratory in that the faithful can claim no *right* of access at any time to them, even though they are permitted at times to enter by those in charge of the oratory. As between themselves: a *semi-public oratory* is one which has been erected for the convenience of a community or group ; a *private* oratory is one which has been erected for the convenience of an *individual* family or person (c. 1188, §2, η. 1, 2, 3).

To the class of semi-public chapels belong oratories in seminaries, colleges, religious houses, retreat houses, boarding schools, hospitals, orphanages, hospices, garrisons, prisons and ships.

§2. Rights of Oratories

Rights of public oratories— Public oratories are governed by the same law as churches. Therefore, provided it has been consecrated or at least blessed, all sacred functions may be performed in a public orator}', saving the exceptions established by the rubrics. Thus, e.g., the functions of Holy Week may not be conducted therein (c. 1191).

Rights of semi-public oratories— In these chapels all sacred functions may likewise he permitted saving the exceptions of the rubrics, or the special prohibitions of the Ordinary (c. 1193). But by their quinquennial faculties our local Ordinaries may permit Mass on Holy Thursday in semi-public oratories even though it be not a solemn Mass. The local Ordinary may forbid services in the chapels of religious at an hour which interferes with the service.; in the parish, unless the religious arc content to close the chapel to outsiders altogether at such times (c. 609, §3). It should be noted that solemn baptism may not be conferred in semi-public oratories (c. 773); all other sacraments may be administered, safeguarding the rights of pastors, and excepting certain chapels for marriage.

Sacred functions cannot be held in semi-public oratories unless they have been erected with the consent of the competent

Ordinary (c. 1193). But semi-public chapels neither need be consecrated nor blessed (c. 1196. §2). If consecrated or solemnly blessed, the feast of the titular should be observed, and the anniversary of the consecration. If blessed in a simple manner as a house, these rules do not apply.

Rights o/ *private oratories*—We must distinguish between common and privileged private oratories.

A privileged private oratory is one in which by induit of the Holy Sec Mass may be said daily, saving certain more solemn feast days as specified in the induit. On holydays of obligation, moreover, the obligation of hearing Mass may be satisfied therein by the *indultarius,* his family and near relatives, as specified in the induit (c. 1195). A privileged oratory must not be confused with the privilege of a portable altar described in c. 822, to be considered presently.

Aside from Apostolic induit anyone may set apart a room in his home for prayer (common private oratory). But Mass may not be said there save by permission of the Ordinary in some extraordinary circumstances (c. 1196).

The chapels of cardinals and bishops arc privileged private oratories but enjoy all the rights of semi-public chapels (c. 1189).

ART. III

Altars

Mass may not be said save on a consecrated altar (c. 822, §1). There are two kinds of altars in the liturgical sense: movable and immovable altars. By an *immovable* altar is meant the entire upper slab of the altar together with the supports upon which it rests and to which it is permanently fixed (cemented), and which has been consecrated at one and the same time with the supports. By a *movable* altar (called also *portable* altar) is meant the small altar stone, approximate!}· a foot square, on which the chalice rests during Mass. Likewise, the entire upper slab must be considered a movable altar if it was not consecrated simultaneously with its supports (c. 1197, §1).

In a consecrated church at least one altar must be an immovable altar. In a blessed church all the altars may be movable (c. 1197, §2).

Both the immovable and the movable altar must consist of one, unbroken, natural and non-friable stone. Each must contain in

its sepulchre relics of the saints. This sepulchre thereafter is closed by a small stone and cemented (c. 1198).

Any bishop may lawfully consecrate movable altars (altar stones), but only the local bishop, or a bishop invited by the local Ordinary, may consecrate an immovable altar (c. 1199, §2).

An altar loses its consecration: 1) if it suffers a notable fracture either by reason of the quantity of the fracture (so that no remaining part is large enough to contain the host and chalice), or by reason of the place where it was anointed; 2) if the relics arc removed, or the cover of the sepulchre is broken or removed, unless this was done on the occasion of episcopal visitation. In addition, an immovable altar loses its consecration if the upper table is separated even momentarily from its supports (c. 1200, §1, 2).

A slight fracture does not entail loss of consecration, and any priest may repair it by cementing the crack (c. 1200, §3).

Chapter X

ECCLESIASTICAL BURIAL

Among all tribes and nations an innate sense of reverence has ever prompted men to treat with respect the mortal remains of their fellowmen. This natural sentiment of the human heart has received additional strength among Christians by reason of the dogma of the resurrection of the body.

As a general rule, then, the Church forbids cremation especially when this is expressive of a denial of the resurrection of the dead, a motive which seems to have inspired cremation among the Freemasons (H. O., June 19, 1926; *Acta* XV'III, 282). And Christian burial is to be refused those who ordered their bodies to be cremated. Moreover, such disposition if contained in a last will or other document, or if made orally, is to be ignored by the heirs as of no validity in canon law, unless civil law renders impossible the observance of this rule (c. 1203).

Where just reasons are present the Church will permit cremation, e.g., during a plague. Cremation itself, it must he noted, is not sinful, but it becomes sinful onljr when resorted to in contempt of religious belief.

Ordinarily the bodies of the faithful should be buried in consecrated ground, i.e., a cemetery. In five articles we shall discuss: 1) cemeteries considered as sacred places; 2) the church of burial; 3) the cemetery of burial; 4) funeral taxes; 5) denial of Christian burial.

ART. 1

Cemeteries Considered as Sacred Places

It is the inherent right of the Church to possess her own cemeteries (c. 1206). The reason is that the Church, being a sovereign society by the will of Christ, has the right independently of the State to all means useful or necessary to attain her end. Among such means must be reckoned cemeteries: 1) because the Church has surrounded the act of burial with religious ceremonies, thus

making it a religious act; 2) because only through possessing her own cemeteries intended exclusively for the burial of her own members can the Church give external expression to that sentiment of faith and justice which holds that those who in life refuse communion with the Church should not be permitted such communion after death.

In the U. S. private societies are allowed to incorporate and own their cemeteries. The Church in this country, therefore, has full control over her cemeteries in the capacity of a private society, though not as a matter of inherent right.

Every parish according to common law should have its own cemetery. Where financial conditions forbid this, the local Ordinary may establish a cemetery common to a number of parishes. The mutual rights and duties of the different parishes in such cases arc to be determined by the rulings of the local Ordinary (c. 1208, §1).

Exempt religious may possess their own cemeteries, and this right they have by the common law. Other moral persons, and even private families may have a burial place of their own, distinct from the common cemetery, but by explicit permission of the local Ordinary (c. 1208, §2, 3).

In both the parish cemetery, by permission of the local Ordinary, and in cemeteries of religious by permission of the superior, it is permitted the faithful to choose their own graves or plots. In this country these gràves are sold (leased) to individuals or families, the price being paid in consideration of the rental of the ground, and not in consideration of the consecration, which would be simony (c. 1209, §1).

Every cemetery should be consecrated, or at least solemnly blessed. The cemeteries of exempt clerical religious are blessed by the major superior, or his delegate; all others arc consecrated or blessed by the bishop, or his delegate. The same rules hold here as in the consecration and blessing of churches. Hence, too, the same rules apply concerning the violation and reconciliation of cemeteries (c. 1205, §1 ; 1207).

In addition to the blessed cemetery, there should be set aside a separate unblessed place for the burial of those Catholics who are denied Christian burial (c. 1212).

No cadaver may be exhumed from a Catholic cemetery without permission of the Ordinary. Usually, a permit from the civil authorities will also be necessary (c. 1214).

ART. II

The Church of Burial

Ecclesiastical burial consists in the transfer of the body to the church, the funeral service in the church, and interment in a Catholic cemetery (c. 1204). The question now arises: to which church is the body to be brought, i.e., which pastor has the right to the funeral service?

The rule is that a person should be buried from his proper parish. The proper parish is that parish within whose confines the deceased had a domicile or quasi-domicile. In the case of foreign language parishes, however, membership is governed by diocesan laws or local customs (c. 1216).

To the rule that the deceased must be buried from his proper parish church, there are five exceptions:

Exception 1. If the deceased chose a funeral church different from that of his proper parish (c. 1223), for the Code gives everyone the right to this choice, saving children under the age of puberty, and professed religious (c. 1224). However, the relatives are not permitted to choose the funeral church, nor anyone but the deceased. And there must be proof through a legitimate document, or two witnesses, that the deceased before his death chose a church different from that of his proper parish, or that he authorized others to make this choice for him (c. 1226). The witnesses may be the relatives of the deceased (S. C. Council, Julv 10, 1921 ; *Acta* XIJI, 535).

Exception II. If the body cannot be brought to the proper parish church without grave inconvenience, the funeral takes place from the parish where the person died. But the relatives and other interested persons always have the right to demand that the body he transferred to the proper parish, provided they are willing to defray the expenses of transportation (c. 1218).

Exception III. Bishops, as a rule, are taken to their cathedral church for burial (c. 1219).

Exception IV. Residential beneficiaries, e.g., pastors, are to be taken to the church of their benefice, unless they* had chosen a different church (c. 1220).

Exception \′. Religious are generally buried from the church or chapel of their convent, or religious house. This applies also to novices, unless these chose a church of their own. In clerical religions it is the religious superior who conducts the services; in lay

religions exempt from the jurisdiction of the pastor, it is the chaplain; in religions not exempt from the local pastor's jurisdiction, it is the latter who conducts the funeral (c. 1221; 1230, §5). But the proper parish is the church of funeral for those who, other than the professed and novices, lived day and night in the religious house (c. 1222). This applies also to postulants and students in preparatory seminaries (Code Comm. July 20, 1929; *Acta* XXI, 573).

Note—The general rules contained in this article suffice to determine the proper pastor of funerals for all practical purposes in our country. It is true that the Code goes more into detail, but in so doing it has in mind customs and practices not observed in the U. S. Thus, an American pastor docs not ordinarily escort the body from the home to the church. Moreover, we have very few non-parochial churches to complicate matters. The casuistry regarding a situation where the body cannot be conveniently taken to the proper parish of the deceased is generally superfluous with us, since the expenses of transporting the body home, even to a very distant city is often cared for by insurance policies, or the good will of the survivors.

ART. III

The Cemetery of Burial

The general rule is that the deceased must be buried in the cemetery of the parish church from which the funeral services arc conducted (c. 1231, §1). Yet, here too we find exceptions.

Exception I. If the deceased had chosen a cemetery distinct from the cemetery *of* the funeral church. The Code permits anyone to choose not only his church of burial, but also the cemetery of burial (c. 1223, §1), and this choice may be proved in the same manner as the choice of the funeral church can be proved (c. 1226). But children under the age of puberty, and religious, are forbidden to choose their own cemetery of burial (c. 1224).

Exception II. If, although the deceased had not chosen a cemetery, he has an ancestral tomb, or family plot, in a cemetery other than that of the funeral church, burial should take place in the former cemetery, provided the body can be transported there conveniently (c. 1228). Yet it is always the right of the survivors or heirs to pay the expenses of the transportation so as to have the

body buried in the cemetery of the ancestral tomb or family burial plot (c. 1229).

Under the pre-Code law the *ecclesia tumuli* had joint rights with the *ecclesia propria defuncti* and the *ecclesia electiva* to conduct the funeral services. Whether this still holds is disputed. At any rate, custom is accorded a more modifying influence over the common law in the matter of funerals than perhaps in any other matter. With us, when a person dies away from home and is transported to his home city or town for burial in the family plot, it is customary to conduct the funeral services as well as the interment in the latter place. Here the funeral church is usually left to the choice of the survivors.

To be valid the choice of a cemetery must fall on a Catholic cemetery. The I Plcn. Council of Baltimore instructed pastors to refuse church burial to Catholics who refused to be buried in a Catholic cemetery. The II (n.392) and III (n. 317-319) Plen. Councils modified this rule to the extent of permitting burial in a non-Catholic cemetery: 1) to converts whose family plot was in a non-Catholic cemetery; 2) to Catholics who prior to 1853 (or after that date in good faith) had bought a plot in a non-Catholic cemetery. In these cases the individual grave was to be blessed prior to interment (cfr. Cone. Balt. Plcn. III, n. 317-319). In many rural sections Catholics, being few, arc unable to own their own cemetery. In that supposition either a separate part of the community cemetery should be reserved for Catholics with the permission of the competent lay authorities, and this portion blessed, or each individual grave must be blessed immediately prior to interment.

ART. IV

Funeral Taxes and the Quarta Funeraria

By the funeral tax is meant a monetary sum paid to the pastor to defray the expenses incurred on the occasion of the funeral service, and partly as pastoral maintenance. Understood in this sense, the funeral fees are reasonable. At one time, however, due to abuses, nothing could be asked, but whatever was freely given could be accepted. Today, also, nothing can be demanded beforehand as a *conditio sine qua non,* but the heirs and executors have a strict obligation in conscience of paying the fees, and this in virtue of positive law introduced by custom and sanctioned by the Church.

The funeral taxes arc fixed by diocesan law or custom. In many places, and this is the desire of the lawgiver, a diocesan schedule which determines the fees for different classes of funerals is followed, e.g., one tax for a simple high Mass, another for a solemn high Mass; one for an early funeral, another for a funeral at a late hour, etc., (c. 1234). Exempt religious must abide by this schedule (Code Comm., Mar. 6, 1927; *Acta* XIX, 161).

The poor must be given a gratuitous funeral service. This should include at least a low Mass and the *Libera,* and whatever else diocesan law may determine (c. 1235, §2).

Whenever the deceased is not buried from his proper parish, and provided the body could have been taken there conveniently, the proper pastor has a right to a share of the funeral fees. The reason is that he who ministered to the spiritual needs of the deceased in life, should minister to him also in death; and if the deceased chose a different church of burial, it is presumed that he desired that at least some part of the fees should be given to his proper pastor in token of gratitude.

The proper pastor's share is called by the Code *portio paroecialis.* In the pre-Code law it was called *portio canonica* because sanctioned by the canons, and *quarta funeraria* since it consisted of one-fourth of the offering made. The Code leaves it to diocesan law or custom to determine the amount due to the proper pastor. Moreover, the Code sanctions particular customs abolishing the *portio paroecialis* (c. 1236, 1237). Such contrary custom seems to prevail generally in the U. S. But restitution of the fee by a pastor who was in no way entitled to the funeral must not be confused with the *quarta funeraria.*

ART. V

Denial of Ecclesiastical Burial

The following arc to be denied ecclesiastical burial in accordance with c. 1240, §1:

1) Unbaptized persons; but catechumens are to be classed as baptized if they died unbaptized through no fault of their own;

2) Notorious *apostates* from the Christian faith;

3) All who had notorious membership in an *heretical* or *schismatical* sect, or Masonic sect, or in any other similarly condemned society;

4) Those who died under excommunication or personal interdict pronounced by the ecclesiastical court;

5) Those who *deliberately* committed *suicide;*

6) Those who died in a *duel,* or from the effects thereof;

7) Those who gave orders that their bodies be *cremated;*

8) All other public and manifest sinners; e.g., who lived in concubinage, or unlawful wedlock.

The above persons are not to be denied Christian burial if they gave signs of repentance before death. In doubtful cases the Ordinary must be consulted. But if time does not permit, the deceased is to be given the beneiit of the doubt. But in all cases scandal should be removed, e.g., by a word of explanation to the parishioners or those who attend the funeral why the deceased is being, or was given church burial.

It should be recalled that when Christian burial is denied, this means also that no public Mass or liturgical service of any kind is allowed (c. 1241). But the priest may visit the home of the deceased and recite some prayers as a friend rather than as an official representative of the Church, so long as this would not give rise to adverse talk, and misunderstandings, and therefore, possible scandal.

Chapter XI

HOLYDAYS AND FAST DAYS

ART. I

Holydays

Holydays listed— The days on which Mass must be heard, and servile works may not be engaged in are besides all Sundays: 1) Christmas; 2) Circumcision; 3) Epiphany; 4) Ascension Day; 5) Corpus Christi; 6) Immaculate Conception; 7) Assumption *of* the B. V. M.; 8) Sc. Joseph (Mar. 19); 9) St. Peter and Paul (June 29) ; 10) All Saints. This is the law for the universal Church (c. 1247, §1).

But in the United States the holydays, excepting Sundays, have been reduced to six: 1) Christmas; 2) Circumcision; 3) Ascension; 4) Assumption; 5) All Saints; 6) Immaculate Conception. I'he induit was granted by the Holy Sec to the III P'en. Council of Baltimore, and in virtue of c. 1247, §3 it still holds.

Feasts which prior to the Code had been observed as holydays of obligation in some country, diocese or place, if they arc not contained among those listed above in c. 1247, §1, must be considered abrogated (Code Comm., Feb. 17, 1918; *Acta* X, 170).

Dispensing powers— Pastors can dispense from the observance of Sundays and holydays in the case of their parishioners, even while these are outside of the parish, and in the case of non-parishioners while these arc actually in the parish. They may not dispense the whole parish, but only individual persons or families for a just cause and not *per modum habitus,* i.e., for this or that holyday, not for all holydays (c. 1245, §1). Superiors in clerical exempt religions have the same dispensing powers in the matter of holyday observance as have pastors, but only in reference to their novices, professed subjects, and those who live day and night in the religious house as guests, students, servants or patients (c. 1245, §3).

ART. II

Days of Fast and Abstinence

Enumeration—Abstinence only must be observed on all Fridays, saving those Fridays included in the next sentence when fast also is binding. Fast and abstinence both must be observed: 1) on Ash Wednesday; 2) Fridays and Saturdays of Lent; 3) ember days; 4) the vigils of Pentecost, Assumption, All Saints, and Christmas. Fast only is observed without abstinence on all days of Lent saving the Fridays and Saturdays (c. 1252, §1, 2, 3).

On Sundays there is never any fast or abstinence. This applies also to holydays of obligation other than Sundays, unless the holyday falls during Lent, e. g., the Feast *of* St. Joseph. If a vigil requiring fast and abstinence falls on a Sunday, e.g., if the Feast of the Assumption falls on Monday, the fast need not be anticipated on Saturday. The fast of Lent ceases at noon of Holy Saturday (c. 1252, §4). If a day of fast or abstinence or both falls on a holyday which is such by universal law but which is not observed in some place by reason of an induit to the contrary, the law concerning fast and abstinence docs not cease on those suppressed feast days (Code Comm., Feb. 17, 1918; *Acta,* X, 170), e.g., if Epiphany with us falls on a Friday, we must observe abstinence.

If religious, or any other individual or moral persons, are held by their vows or constitutions to fast or abstain, such vows or constitutions. retain their binding force notwithstanding the relaxations permitted in the preceding paragraph (cfr. c. 1253). Thus, e.g., if the constitutions provide fast during the entire Advent season, the religious will be bound to *fast* on the Feast of the Immaculate Conception should this fall on Friday.

Nature of fast and abstinence—The law of abstinence forbids only the consumption of flesh meat and broth made of meat, but it does not forbid eggs, milk, or the products of milk, and the seasoning of foods with the fat of animals (c. 1250). 'I'he law of fast prescribes that only one full meal a day be taken, but it does not forbid something to be eaten morning and evening, provided that at such morning and evening meals local custom be observed as regards quantity and quality of food which may be consumed (c. 1251, §1). It is not forbidden to eat fish and meat at the same meal, nor to change or reverse the evening and the morning meals (c. 1251, §2).

It is not permitted to eat meat more than once a day on days of fast only (Code Comm., Oct. 29, 1919; *Acta* XI, 480). But one who by reason of age, frail health, etc., is exempt from fast may eat meat as often as he pleases on days of fast only (S. C. Council,

Oct. 17, 1923; as reported by Bouscaren, *o.c.,* I, 587).

Bound to *abstain* are all persons who have completed their seventh year of age; bound to *fast* are all persons from their twenty-first to their fifty-ninth completed year of age (c. 1254). This ruling applies equally to women and to men (Code Comm., Jan. 13, 1918; as reported by Bouscaren, *o.c.,* I, 593).

Dispensations and induits—The Holy See has been wont to grant our local Ordinaries the privilege of the workingmen's induit, and that of transferring the abstinence from Saturdays in Lent to Wednesdays. In virtue of the workingmen's induit the bishop can dispense workingmen and their families, who otherwise would be held to abstinence, to the extent of allowing them to eat meat once only on all days of abstinence during the year except Fridays, Ash Wednesday, the forenoon of Holy Saturday and the vigil of Christmas. Both induits are usually granted over a five year period and thereupon renewed for another five years. On Oct. 5, 1931, Pius XI empowered our local Ordinaries *ad quinquennium* to dispense their subjects from the law of fast and abstinence whenever a civil holiday would fall on a day of fast or abstinence or both. The induit has been renewed repeatedly. It can be enjoyed by religious insofar as these are not held to fast or abstinence or both on the days in question by an additional obligation peculiar to their rule or constitutions (cfr. the declaration of the S. C. Rel., Sept. 1, 1912; *Acta* IV, 626).

Pastors may dispense their parishioners from the law of fast or abstinence or both, even though the parishioners use the dispensation outside of the parish; and they may in like manner dispense non-parishioners while these are actually in the parish. The dispensation can be granted only for a just cause to individual persons or individual families, and not indefinitely, but as long as the particular cause continues, i.c., in individual cases (c. 1245, §1), and persons so dispensed should avoid scandal by revealing the fact that they were dispensed, if necessary. Superiors in clerical exempt religions have the same powers to dispense from fast and abstinence as have pastors, but only with reference to their novices, professed subjects, and those who live in the religious house day and night as students, guests, patients or servants (c. 1245, §3). Local Ordinaries may for reasons of public health, or on the occasion of a great concourse of people, e. g·, a large pilgrimage at some shrine, dispense the whole diocese or an entire parish from the law of fast and abstinence (c. 1245, §2). The episcopal induit may be enjoyed by religious provided these arc not held to fast and abstinence by their own rule or constitutions in addition to the obligation of the common law (c. 620).

Chapter XII

DIVINE CULT

ART. I

Cult of the Blessed Sacrament

Reservation of the Blessed Sacrament—The Holy Eucharist *must* be reserved in every parish church, and in every non-parochial church attached to a house of exempt religious (c. 1265, f 1, n. 1).

It *may* be kept, by permission of the local Ordinary, in the chapels of pious and religious houses, and of colleges in care of the clergy, provided some one is on hand to guard it, and provided Mass is said at least once a week, as a rule, in the chapel in order to renew the Sacred Species (1265, §1, n. 2).

But the Blessed Sacrament may be kept only in either the church (non-parochial), or the principal oratory of a religious or pious house (c. 1267). It may be kept, however, in both the church and oratory if the exercises of piety are ordinarily held in the oratory. If a religious house has two or more chapels, the Eucharist may be reserved in only one of them, unless in the same material building arc found juridically distinct families or corporations, e.g., if one part of the convent is occupied by the Generalate, or Provincialate, and another by the parish religious priests, so that in reality there arc two distinct houses in the juridical sense with distinct superiors, although in one material building (cfr. Code Comm., June 3, 1918; *Acta* IX, 346).

Renovation of the Species—The hosts, whether intended for the communion of the faithful or the exposition of the Blessed Sacrament, shall, before being consecrated, be of recent baking. A safe rule is not to allow that the sacred species remain unconsumed longer than a month after their baking. Hence, the older hosts should be consumed first, and the new hosts to be consecrated should be so measured that they will not remain unconsumed more than a month computing from the day of their baking (cfr. c. 815, 1272).

Exposition of the Blessed Sacrament—We must distinguish between public exposition, i.e., with the ostensorium, and private exposition, i. c., with the pyx.

For public exposition the permission of the local Ordinary is required even by religious, both in churches and chapels, saving the feast and octave of Corpus Christi (c. 1274). The bishops usually draw up a schedule of days upon request when the Blessed Sacrament may be exposed publicly during the year in oratories. The diocesan statutes generally regulate this matter for churches.

Private exposition is always allowed even without the permission of the local Ordinary, but a just cause must be present (c. 1274). Thus, if two distinct services arc held on a Sunday, the pastor may have public exposition at one service in virtue, e.g., of diocesan law, and private exposition at the other.

The local Ordinary's permission is required not only for a lengthy exposition, but likewise for the short exposition which accompanies the Benediction with the Blessed Sacrament (Code Comm., Mar. 6, 1927; *Aeta* XIX, 161).

ART. II

Sacred Relics

Onlj' those relics may he exposed for public veneration in churches, including exempt churches, which have been authenticated by a cardinal or the local Ordinary, or some other ecclesiastic vested by Apostolic induit with the authority to authenticate relics (c. 1283). But this authentication does not hold for private veneration of relics, and relics may be kept in the homes of the faithful and carried about on their person, observing due respect and honor (c. 1282, §2).

Relics of the Blessed (this docs not apply to relics of the Saints), may not be carried about in processions, nor exposed for public veneration save in those churches where Mass and office arc celebrated in their honor by Apostolic induit (c. 1287, §3).

It is unlawful to sell sacred relics. And those who fabricate false relics, or knowingly sell, distribute or expose them for public veneration incur excommunication reserved to the Ordinary (c. 1289, 2326).

ART. III

Sacred Furnishings

Sacred furnishings should be carefully kept in the sacristy or in some other safe and becoming place; nor should they, if blessed or consecrated, be devoted to profane uses (c. 1296, §1). Thus, it is forbidden to use the burse to take up collections (S. C. Rites, May 2, 1919; zZc/α XI, 246).

Before entering upon their office, administrators of ecclesiastical goods, e.g., a new pastor, should draw up a careful inventory of all the movable and immovable sacred furnishings of the church, one copy of which inventory should be kept in their own archives, another in the diocesan archives (c. 1296, §2). Pastors should also designate in their last will those sacred furnishings which are their personal property; otherwise the Church, and also the civil law in the U. S., will presume that they belong to the parish (cfr. c. 1300). Where parishes are incorporated under the laws of the State, there is little need of the pastor to designate another person to whom the church furnishings will pass upon his death as upon a trustee; they automatically remain in the ownership of the parish; hence c. 1301 has little value in this country.

As to the material and form of sacred furnishings, liturgical laws and ecclesiastical traditions must be respected (c. 1296, §3). The Holy See is opposed to the introduction of Gothic vestments (S. C. Rites, Dec. 9, 1925; *Acta* XVIII, 58).

Chalices and patens must be consecrated. The amice, alb, cincture, maniple, chasuble, pall, corporal and altar linens *must* be blessed, and probably the lunula. The ostensorium, pix, dalmatics, cope and surplice *may* be blessed. Purificators, the chalice veil, burse, antipendium, candlesticks, cruets, censers, etc., may *not* be blessed (cfr. Augustine, *oχ*. VI, under canon 1297).

Competent to bless sacred furnishings are: 1) cardinals; 2) bishops; 3) pastors and rectors of non-parochial churches; 4) all priests delegated by the local Ordinary with faculties to this end; 5) religious superiors and those priests of their religion whom they delegate, but only with respect to furnishings of their own churches or chapels, or those of nuns subject to them (c. 1304). In this country there are no nuns subject to regulars. If a religious priest is chaplain of a community of sisters, or even of so-called nuns with us, he must be delegated by the local Ordinary to bless the sacred furnishings of their church or chapel. Diocesan faculties often confer such powers.

Sacred furnishings lose their consecration or blessing: 1) if they suffer such fractures, rents or changes that their original form cannot be recognized, or if they can no longer be used for the purpose originally intended; 2) if they have been subjected to unbecoming uses, or exposed for auction. A chalice or paten does not lose its consecration if the gold plating wears off. But it should be replatcd, and if given to a firm having episcopal approval, the bishop's permission need not be obtained to the end that a layman may touch the chalice or paten (cfr. c. 1305).

Neither the chalice nor the paten, nor, after they have been used at Mass, the purificator, pall or corporal, should be touched, save by clerics, *or* by those who have charge of these articles (c. 1306, §1). It will he noticed that the canon employs the particle *or,* from which it is logical to conclude that lay sacristans may touch the articles in question. All other laymen should employ the purificator to carry or repose these objects in their place. But a purificator is not required in the case of the ostensorium or any other object not enumerated in c. 1306, §1 above. Purificators, palls and corporals must be given their first washing by a cleric in major orders, and this water should then be thrown into the sacrarium or the fire. Note that a first washing by the cleric in major orders is not prescribed save for the linens here listed (c. 1306, §2).

Chapter XIII

THE TEACHING AUTHORITY OF THE CHURCH

In four articles we shall consider: I) sacred preaching; 2) seminaries; 3) the prohibition of books; 4) the profession of faith.

ART. I

Sacred Preaching

Unless he has the right already in virtue of his office, e.g., as pastor, no priest is permitted to preach without first obtaining faculties from the competent superior (c. 1328).

Saving the case where a sermon is to be had before the novices or professed members of a clerical exempt religion, or before those who day and night live in the clerical exempt religious house as Students, guests, patients or servants, in which cases the religious superior may give preaching faculties, only the local Ordinary is authorized to permit priests, even exempt priests, to preach (c. 1338). But the local Ordinary may delegate his ordinary jurisdiction, e.g., to pastors, permitting them to subdelegate extra-diocesan priests to preach in their parish. We say extra-diocesan, for it is the practice of local Ordinaries in the U. S.. to grant in their diocesan faculties the authority to all resident priests to preach anywhere in the diocese. Where pastors do not enjoy habitual faculties to subdelegate, they must apply to the local Ordinary for preaching faculties to permit outside priests to give missions, to supply over Sunday, etc., (c. 1341. §2). Preaching and confession faculties arc usually granted simultaneously.

By common law pastors must give a homily on every Sunday and holyday of obligation at least at one Mass. Nor should the pastor habitually discharge this office through others, save for a just cause approved by the local Ordinary (c. 1344, $ 1, 2). With us it is the practice to preach at every Sunday Mass, and this is usually an obligation in virtue of diocesan statutes. But the local

Ordinary may dispense from sermons on certain Sundays for a just cause (c. 1344, §3).

Local Ordinaries must see to it that during Lent more preaching than usual is done in parish churches (c. 1346, §1).

Every parish ought to have a mission at least once every ten years (c. 1349, §1).

Canon 1350 enjoins upon pastors that they interest themselves in the spiritual welfare of the non-Catholics who live in their parish. Special informal apologetic classes, e.g., in the school hall, could he arranged for those willing to attend in the evening. The zealous pastor will easily find ways and means of bringing the Catholic doctrine to the knowledge of well-disposed non-Catholics.

ART. II.

Seminaries

We shall treat seminaries in the following order: 1) the nature and kinds of seminaries; 2) the need of seminaries; 3) the administration of their temporalities; 4) seminary discipline; 5) rights and duties *of* rectors; 6) admission and dismissal of candidates; 7) religious seminaries.

§1. Nature and Kinds of Seminaries

An ecclesiastical seminary is an institution devoted exclusively to the instruction and training of aspirants to the priesthood. We say, *devoted exclusively,* etc., to distinguish an ecclesiastical seminary from all other schools, whether under church control or not, which arc frequented both by laymen seeking a lay education, and by clerical aspirants, and which for that reason are called mixed schools. We say, devoted to the *instruction and training,* etc., for the purpose of a seminary is twofold: to impart knowledge both liberal, and professional, and to subject the candidate to a system of discipline by which he may gradually acquire virtues, habits and personal manners becoming his calling. In this latter respect, seminaries arc not unlike military and naval academies where both professional knowledge and disciplinary training arc acquired.

Seminaries arc divided into: 1) minor and major seminaries; 2) diocesan, interdiocesan, provincial, pontifical and religious seminaries.

A minor seminary, sometimes called a preparatory college, is

one in which the candidate for the priesthood receives a liberal education, i.e., in languages, higher mathematics, natural sciences, etc. A major seminary is one in which philosophy and theology arc taught together with their allied subjects, e.g., liturgy, canon law, etc.

A diocesan seminary is under the control of the bishop of the diocese in which the seminary is situated ; an interdiocesan seminary is under the joint control of several bishops not of the same ecclesiastical province; a provincial seminary is under the joint control of all the bishops of one and the same province; a pontifical seminary is under the immediate jurisdiction of the Holy See; a religious seminar}' is one conducted and controlled by a body of religious priests cither for their own clerical aspirants exclusively, or for other clerical aspirants as well.

§2. Necessity of Seminaries

From the twofold purpose of seminaries as stated in the definition given above, namely the professional instruction and training of clerics, it follows that these institutions arc most useful to the life of the Church, and to a certain extent essential. For while the liberal education received in minor seminaries can be obtained at secular colleges, yet the segregation *of* the candidate from the world, and the daily exercises of piety which are realized in the minor seminaries greatly conduce to the preservation of the youthful candidate's vocation. On the other hand, the theological faculties of certain State universities in Europe, being under control of the civil authorities as to the appointment of professors, selection of textbooks, etc., cannot insure the same degree of orthodox teaching which is found in the major seminaries under the direct control of the Church. And they offer the student no spiritual or moral training to prepare him for his calling.

Since the Church as a sovereign society has the right to all means useful or necessary to her end, and since, as was seen, seminaries are both useful and necessary in the Church, it follows, as canon 1352 states, that it is the inherent and exclusive right of the Church to educate candidates who desire to enter the sacred ministry. In the United States the civil authorities permit the greatest latitude to private corporations in the matter of education, and the Church has never suffered interference with respect to her right to erect her seminaries and educate her own clerics. To an American it may seem strange that the civil authorities would concern themselves with such matters. But an excessive spirit of nationalism can see in the uncontrolled training of the clergy a

menace to the unity and general welfare of the State. Thus, toward the end of the 18th century Emperor Joseph II of Austria suppressed the diocesan seminaries of Austria, Northern Italy and the Netherlands, and in their place established central seminaries under the control of the State. In the 19th century the Church had to protest against somewhat similar actions by the Bavarian and Prussian governments. Only after repeated protests did the Church gain her freedom in those countries through concordats.

The necessity of specialized instruction and training for clerical aspirants was felt from the very beginning of the Church. St. Augustine established near his cathedral a *monasterium clericorum* in which the candidates were to live a common life. His example inspired local church councils in other countries to enact legislation looking to the early training of clerical candidates. Bishops had their cathedral schools, and the monks their monastic schools in which, however, both laymen and clerics were educated. But seminaries in the modern sense of the word, i. c., institutions in which only clerical candidates are received and educated, owe their origin to the 23rd session of the Council of Trent. That session decreed that every diocese is bound to support and educate a certain number of clerics in proportion to the necessity and resources of the diocese, and poor dioceses could combine to have a common seminary. Poor candidates were to be educated *gratis*. So enthused were the Fathers of the Council at seeing this legislation passed that had the Council done nothing more than enact such provision, they declared their other labors at the Council would have been amply repaid. For they well realized that the deplorable ignorance and unholy lives of many clerics were partly responsible for the so-called Reformation.

The Code in canon 1354 repeats the command of the Council of Trent that every diocese have its own seminary if possible. Where this is not possible the bishop must send his clerical candidates to a seminary of another diocese, or to a seminary conducted by religious, or to an interdiocesan or regional seminary where such have been lawfully established.

§3. Temporal Administration of Seminaries

For the erection of a seminary and the maintenance of the seminarians, the Code in c. 1355 permits the bishop:

1) To order a collection to be taken up at stated times in all the churches of the diocese;

2) To decree a tax or assessment in the diocese;

3) To unite certain simple (non-residcntial) benefices to the seminary.

In the United States simple bénéfices arc unknown. Neither is the assessment as contemplated by the Code practicable. For that assessment is to be equal for all benefices, and parishes, nor can the entire yearly income of a parish he assessed but only that which remains after all expenses have been met. Few parishes in the United States, however, find themselves at the end of the year with a considerable surplus.

Wherefore, with us, seminaries arc maintained: 1) by collections taken up in the churches for this purpose; or 2) by assessments which are levied in proportion to rhe resources of a parish, and regardless of any surplus when all running expenses have been paid; 3) by burses; 4) in some dioceses by an Apostolic induit exempting pastors from the obligation of applying the *Missa pro populo* on certain days provided they give the stipend to the bishop for the support of the seminary, and by the induit permitting priests to accept a stipend for their binated Mass in favor of the seminary.

The general administration of the temporalities of the seminary is in the hands of the bishop. In matters of graver moment he is bound to ask the advice of a board of two priests appointed by himself with the advice of the diocesan consultors, this board to be appointed for a term of six years (c. 1357, §1 ; 1359).

For everyday expenditures there should be appointed a treasurer or procurator *(oeconomus).* This official must live in the seminary, and may be one of the professors, his rights and duties being determined in detail by the statutes of the seminary as drafted by the bishop (c. 1358).

§4. Disciplinary Administration of Seminaries

The disciplinary government of the seminary looks to the intellectual and spiritual training *of* the students.

Here, too, supreme control is vested in the bishop who has the right to draw up statutes and regulations to this end. The bishop ought frequently to pay a personal visit to the seminary, to ascertain how classes arc conducted, what textbooks arc used, etc., and especially before ordinations should he inquire into the character, vocation and intellectual fitness of those to be ordained (c. 1357).

The bishop is assisted also by a board of discipline, which like the board of temporal administration consists of two priests chosen by himself with the advice of the diocesan consultors. In weighty matters, which are not defined by the Code but which might comprise

such points as the selection of professors and textbooks, the selection of confessors, etc., the bishop is bound to ask the advice of this board. Excluded from the disciplinary board, as also from the board of temporal administration, are the rector, the vicar-general, the treasurer, the ordinary confessors, and the *familiares* of the bishop, i.e., those priests who live day and night with the bishop (c. 1359).

A. Intellectual Training

In the minor seminary Christian doctrine must be given first and chief consideration. This should be adapted to the capacity and age of the students. Next in importance come Latin and one's native language. As to other branches of study the seminary curriculum must insure the student that degree of learning which is generally accepted as the common standard of culture for laymen and clergy-in the place where the candidate will exercise the sacred ministry (c. 1364). The Code does not enter into detail here since the concept of a liberal education varies in different countries.

In the major seminary:

1) Philosophy with its allied subjects, e. g., profane history, natural sciences, etc, must be taught for two years.

2) The theological course must comprise four complete years, and in addition to dogmatic and moral theology it must include especially sacred scripture, ecclesiastical history, canon law, liturgy, sacred eloquence and ecclesiastical chant. Moreover, pastoral theology' must be taught in conjunction with practical instructions concerning the manner of teaching catechism to children, of hearing confessions, visiting the sick and assisting the dying (c. 1365).

3) Philosophy and theology must be taught according to the method, teaching and principles of the Angelic Doctor (c. 1366, §2). It does not seem necessary to use the *Summa of* St. Thomas as a textbook, which could hardly' be done for lack of time. It suffices, perhaps, to employ a textbook which follows the scholastic or syllogistic method, provided the author embodies in his leading theses the the doctrine of St. Thomas, even though in the course of a thesis he draws the students' attention to opinions held by other Catholic schools of theological thought.

For the teaching of philosophy, theology and canon law those should be preferred who have received a doctorate in these respective branches from some university or faculty recognized by the Holy-See. Moreover, care should be taken that at least scripture, dogma, moral, and church history have distinct professors (c. 1366, §1, 3).

B. Spiritual Training

In addition to the spiritual director every seminary must have two ordinary confessors (c. 1358). However, the students are to be permitted access to other confessors, no matter whether these live in or outside the seminary, but the discipline of the seminary must be preserved (c. 1361, §1, 2).

The bishop shall see to it:

1) That daily the seminarians recite morning and evening prayers in common, make meditation and assist at the sacrifice of the Mass;

2) That at least once a week they go to confession and frequently receive holy communion;

3) That on Sundays and holydays of obligation they assist and serve at solemn Mass and Vespers, especially in the cathedral church, if in the judgment of the bishop this is possible without prejudice to discipline and studies;

4) That every year they make a spiritual retreat for a number of continuous days;

5) That at least once a week they receive a spiritual conference which ought to close with some pious exhortations (c. 1367).

To further insure the proper spiritual training of seminarians which is often effected more by example than precept, canon 1360 prescribes that those priests should be appointed to the office of rector, spiritual director, confessor and professor who excel not alone in learning but are moreover conspicuous for their virtue and prudence.

Whenever for any reason a student lives outside of the seminary he shall be committed to the care of a pious and competent priest who shall watch over him and train him in piety (c. 1370).

§5. Rights and Duties of the Rector

All the student and professors, as well as other officials of the seminary, must obey the rector in the discharge of their duties (c. 1360, §2). He shall see to it that the professors conduct their classes, and fulfill otherwise their respective duties (c. 1369, §3).

The rector jointly with the other officials of the seminary must see to it that the students observe the seminary rules approved by the bishop, and the plan of studies, and that they become imbued with a truly ecclesiastical spirit. They shall often point out to them the rules of Christian etiquette by word and example and they shall

exhort them constantly to observe the laws *of* hygiene in dress and person, and to cultivate courtesy, modesty and gravity of manners (c. 1369, §1, 2).

The seminary being exempt from the jurisdiction of the pastor, pastoral rights with respect to all who are in the seminary arc reserved to the rector or his delegate, saving marriages (e.g., of the lay help). But the rector shall not make it a habit to hear the confession of the seminarians, although he may occasionally hear those who freelv come to him for some grave and urgent reason (c. 1368).

§6. Admission and Dismissal of Candidates

A. Admission of Candidates

Only legitimate children are to be admitted to the seminary, or those who have been legitimated in accordance with the rules of canon law (c. 1363, §l ; c. 984, n. l ; c. 1114; c. 1116).

The candidate must have that disposition and desire which will justify the hope that he will always discharge the duties of the sacred ministry with success (c. 1363, §1). In other words, the candidate must show signs of a vocation to the ecclesiastical state. We may add with Vermeersch-Creusen *(o.c.* 11, n. 687) that these signs of a vocation to the sacred ministry do not call for a sensible internal invitation of the Holy Ghost, but they are present in every serious minded young man who has a firm resolve to study for the priesthood, and who is hindered by no impediments or irregularities, at least by none from which the Church is not accustomed to dispense. Whether the candidate is in fact both mentally and spiritually qualified to be ordained, i.e., whether in fact a vocation is present, will be discovered in the course of his seminary years.

Before a candidate is received he must present his baptismal and confirmation certificate, and a certificate of legitimate birth if this does not appear from the baptismal certificate. He must also furnish testimonial letters concerning his good character, these being usually given him by his pastor (c. 1363, §2).

B. Dismissal of Candidates

Those are to be dismissed from the seminary who are found to be disorderly, incorrigible, or rebellious; likewise, those who because of their general conduct and character do not seem to be fit candidates for the priesthood; finally, those who progress so slowly in their studies that there is little hope that they will ever

acquire sufficient knowledge. Those who sin against faith and morals must be dismissed peremptorily (c. 1371).

§7. Religious Seminaries

The canons we have considered in this article deal primarily with secular seminaries. But clerical religious Orders and Congregations have also their own houses of studies for their religious candidates, which can be called seminaries.

Concerning the establishment of religious houses, the reader is referred to p. 300, 302. The spiritual government of the houses of studies is covered both by the common law, and by the constitutions of each religious organization. As to the intellectual training of religious seminarians, whether in the minor, or preparatory seminary, or in the major seminary (the clericatc), the same rules apply as for studies in secular seminaries (cfr. p. 356-357).

ART. III

Censorship and Prohibition of Books

Censorship of books—The following books (and the same is to be said of daily papers, periodicals, and any other kind of publications according to c. 1384), may not be edited without the permission of the local Ordinary or the Holy Sec, and the same applies to translations of already approved works (c. 1392), namely:

1) Without permission of the *local Ordinary* (and in addition that of the major superior in case of religious authors according to c. 1385, §3), it is forbidden to both clerics and laymen to publish books of sacred scripture, theology, church history, canon law, natural theology, ethics, prayer books and other devotional works; in short, any publications which professedly discuss religious or moral questions. The same ban applies to holy pictures (c. 1385. §1). Moreover, *clerics* may not, without said permission, publish books even on non-rcligious subjects, nor contribute articles to newspapers or periodicals of any kind (c. 1386, §1).

The local Ordinary competent to give the permission required in the preceding paragraph is: 1) the proper Ordinary of the author; 2) the Ordinary of the place where the publications are edited; 3) the Ordinary of the place where the matter is printed. Should one Ordinary refuse his *imprimatur,* the writer must mention this fact to the other competent Ordinary whom he should happen

to approach, and this under pain of invalidity of the subsequent permission (c. 1385, §2).

The diocesan censor, or censors, in granting the *nihil obstat* after examining the book or article, and the bishop in granting the *imprimatur,* likewise the major superior in giving his *imprimi potest, do* not necessarily vouch for the truth of every statement made by the author, nor do they necessarily thereby approve of each and every opinion he advances. A publication issued with ecclesiastical approval merely assures that the work contains nothing contrary to Catholic teaching in matters of faith or morals (cfr. c. 1393, §2).

2) Without permission of the *Holy See* it is forbidden to publish: a) works intended to further the beatification or canonization of some servant of God (c. 1387) ; b) collections of indulgences, but for books which occasionally insert indulgenced prayers or record indulgences, the local Ordinary's permission suffices (c. 1388); c) collections of the decrees of the Holy See (c. 1389) ; d) translations of the Bible, unless the translations are accompanied by explanatory notes, in which case the bishop's permission suffices (c. 1391). But liturgical books, e.g., breviaries, rituals, etc., likewise litanies, may be published by the sole authority of the local Ordinary, provided the bishop has first made sure that they accord with the first or typical edition printed by the Vatican Press, or by one of the printers to the Holy See (c. 1390, also Woywod, *o.c.,* n. 1405).

Prohibition of books—Not only the Sovereign Pontiff, an oecumenical council and the Holy Office, but also particular councils, local Ordinaries, the supreme moderators of clerical exempt religions, and local abbots, may prohibit their subjects the reading of certain books for a just cause (c. 1395). Once a book is prohibited, all translations thereof are likewise forbidden (c. 1396). When a publication is prohibited this means that, without due permission, not only is one forbidden to read it, but also to keep, sell, translate or alienate it in any way (c. 1398). Cardinals, bishops, and other Ordinaries, are not held to the law of prohibited books (c. 1401). But Orientals are bound to all such prohibitions (S. C. Oriental Church, May 26, 1928; *Acta* XX, 195).

Competent to grant permission to read and retain prohibited publications is one's proper Ordinary, in addition to the Holy See. But the Ordinary may grant the permission only for designated publications mentioned by the petitioner; he cannot grant general indeterminate permissions to a person (c. 1402). One who has obtained permission to rend forbidden books should take care that they do not come into the hands of others who lack such permission (c. 1403, §2). The Code itself in c. 1400 allows all scripture

and theology students to read (within limits) non-Catholic editions of ancient texts of the Bible, whether in their original text, or their ancient, or modern translated versions; likewise all editions published by Catholics without due authorization. Canon 1405 observes that a general permission to read prohibited books does not extend to those publications whose reading is forbidden by the divine law itself, e.g., obscene books, anti-Catholic literature in the case of a person not well grounded in the faith, etc. If a person must read certain books, e.g., teachers and students in the case of certain ancient classics, he must endeavor by prayer and other safeguards to make the proximate occasion of sin remote; if this is impossible, no number of ecclesiastical permissions will justify his reading the books.

Books whose subject matter puts them into any *of* the following categories are forbidden by the common law itself (c. 1399), even though the particular book is not found in the Index of Prohibited Books, and even though the particular book in question may not constitute a danger to the faith or morals of the individual, i.e., even though it is not forbidden hy the divine law in his case, namely: 1) non-Catholic editions of the Bible; 2) books which defend heresy or schism, or professedly attack religion or morality in general, or discuss religion from a non-Catholic viewpoint, or which treat of any religious subjects, being written by Catholics in disregard of the ecclesiastical *imprimatur,* or which describe new revelations, apparitions, visions, prophecies arid miracles, or which introduce unapproved devotions, or vilify Catholic forms of worship, ecclesiastical government, or the clerical or religious state, or which teach or promote superstition of any sort, advocate duels, suicide, divorce, or justify Freemasonry and secret societies, or which professedly treat of obscene matters, or which divulge apocryphal indulgences. In addition, many books are prohibited by special decree of the Holy See, and the totality of such books constitutes the so-called Index of Forbidden Books.

Lest the legislation concerning the prohibition of books lose most of its efficacy, pastors should frequently instruct their people concerning the moral danger inherent in bad literature in general, and in publications prohibited bv the Church in particular (c. 1405, §2).

While those who read the above prohibited books without due permission are always guilty of sin, they do not always fall under censure (cfr. p. 706-707).

ART. IV

Profession of Faith—Oath Against Modernism

Profession of faith—Those who must make the profession of faith, a profession which they must make personally and not through a proxy (c. 1407), all contrary customs being abrogated (c. 14US), are the following:

1) Diocesan consultors before they assume office must make the profession of faith before the local Ordinary, or his delegate, and the other consultors;

2) Vicars-general and pastors prior to assuming office before the local Ordinary or his delegate;

3) The rector of the seminar}' and the professors of theology, canon law, and philosophy before the local Ordinary or his delegate, and this at the beginning of each scholastic year;

4) Candidates for the subdiaconatc, and for confession and preaching faculties, before the local Ordinary or his delegate;

5) Superiors in clerical religions (and in clerical societies without vows, according to the Code Comm., July 25, 1926; *Acta* XVIII, 393), before the chapter or the superior who appointed them, or before their delegates (c. 1406, §1).

The profession of faith must be repeated as often as a re-appointment to any of the above offices occurs (c. 140b, §2).

Oath against Modernism—Being in the nature of a transitory precept, the Oath against Modernism prescribed by Pius X, *Sacrorum Antistitum,* Sept. 1, 1910 *(Acta* II, 655), was not mentioned in the Code. Nevertheless, until Modernism disappears, the Oath retains its binding force and must be taken by all who are held to the profession of faith as just described (cfr. H. Off., Mar. 22, 1918; *Acta* X, 136). Further declarations on the Oath were issued by the Consistorial Congregation, Sept. 25, Oct. 25, Dec. 17, 1910. From which declarations it can be seen that professors in seminaries, including religious professors in religious houses of studies, must both make the profession of faith and pronounce the Oath against Modernism annually.

Chapter XIV

ECCLESIASTICAL INSTITUTIONS

Among ecclesiastical things the Code reckons ecclesiastical institutions. These are in the nature of non-collegiate persons, of whom we spoke above on p. 131.

They arc corporations consisting of a collection of goods or assets upon which the Church confers legal personality.

The ecclesiastical non-collegiate person finds no counterpart in American law. The closest approach to them is the case of the eleemosynary, or non-stock corporations. But even these arc composed of physical persons, and it is these physical persons who arc incorporated as trustees of the college, hospital, etc., not the goods themselves.

In the case of ecclesiastical institutions we find physical persons, it is true, who act in the capacity of trustees, boards of directors, etc., but these persons are not incorporated, only the goods arc incorporated ; the title to temporalities vests in the fictitious legal person, not in the administrators or any other physical persons.

ART. I

Ecclesiastical Benefices

We shall discuss: 1) the origin of benefices; 2) their nature; 3) parochial benefices in particular.

§1. Origin of Benefices

In the primitive Church the offerings of the faithful all went into one common fund. The administrator of this fund was the bishop who divided it into four parts, one portion being reserved to himself, another going to the support of the clergy, a third to the relief of the poor, a fourth to the erection and maintenance of sacred edifices. This system did not find favor with the rural

clergy, especially as the offerings were usually in kind, and these they had to forward to the bishop only to receive them back again.

When about the sixth century the Church came into possession of lands through the piety of the faithful and the liberality of civil rulers, certain of these lands were allotted to the rural clergy for their maintenance. The cleric was not considered the owner of the property but only the usufructuary, i.e., he had the right to the income, e.g., the grain, fruit, cattle, rent, etc. About the 11th century this system of clerical support had become universal. The cleric's right to the revenues from such real estate was called a benefice, the word *beneficium* among the ancient Romans having signified any grant by a sovereign to his subject, and in later feudal days more particularly the grant of land made by some powerful overlord to an inferior nobleman in recognition of the latter's fidelity and military support, the overlord remaining in theory the owner of the land, while the other had but the right to the revenues. In the case of the clerical benefice, the church land itself became by a fiction of law an owner, while the beneficiary enjoyed the income.

Notwithstanding the wholesale secularization of church property by civil governments since the 17th century, benefices still obtain in the Church today, the cleric's source of maintenance deriving otherwise, as a rule, than from real estate.

§2. Nature of Benefices

An ecclesiastical benefice is a juridical entity erected in perpetuity by the competent ecclesiastical authority, and consists of a sacred office together with the right to derive revenue from the endoivment of the office (c. 1409).

Four elements, then, constitute an ecclesiastical benefice: 1) a sacred office, c. g., the care of souls in the case of a parish, the recitation of the canonical hours in the case of a canonry, the celebration of Mass in the case of a chaplaincy, etc.; 2) an endowment (capital) from the income of which the cleric is supported; 3) perpetual establishment; 4) erection of the office into a moral person.

The endowment of a benefice may consist: 1) of real estate: 2) of obligatory payments on the part of physical persons, e.g., patrons, or moral persons, e. g., the State in many European countries; 3) of voluntary offerings of the faithful, as in the case of our parishes; 4) of stole fees; 5) of choir distributions, e.g., in the case of cathedral canons.

In pre-Code days it was the common teaching that with few exceptions our parishes in this country were not benefices. The reason for this was twofold: 1) all benefices by common law were to be conferred in perpetuity, and this is restated in c. 1433; 2) the endowment was supposed to consist of real estate. Under the Code there can be no doubt that our parishes in America are now benefices: 1) because, as was seen, the endowment may consist of voluntary offerings of the faithful; 2) because *parochial* benefices need no longer be conferred in perpetuity, the Code in c. 454 making room for removable pastors.

In the United States we have only two kinds of benefices, it would seem, namely, bishoprics, and pastorships. Both the bishop and pastor are supported by the free-will offerings of the faithful in the form of a salary; the latter directly so, the former by way of assessment or thr cathedraticum. And while we have chaplains and assistant pastors exercising sacred offices and deriving a fixed salary therefrom, yet these offices with us are not looked upon as benefices, although it would seem that nothing is lacking to constitute them benefices save the declaration of the bishop. That declaration would probably have only one practical effect, namely to make such chaplaincies and assistant pastorships irremovable offices. In which case the chaplains could not be generally removed against their will save for certain criminal offenses, specified in the law, and by way of a formal trial; nor could the assistant pastor be removed save in the manner of pastors, or for grave disregard of the pastor's authority (c. 477).

§3. Parochial Benefices

Of the 89 canons which discuss benefices, very few have practical application to the Church in this country. The legislation concerning non-residential and non-curatc benefices may be ignored, these being non-existent with us, e. g., canonries. Likewise, those canons which define the rights of patrons may be ignored since we have no patrons, and the bishop has a free hand in the erection and conferment of secular parishes. Again, many canons contemplate a system where the beneficiary is supported by income from real estate, and they determine the rights and duties of the cleric on this score. But our pastors are simply maintained by the free-will offerings of the faithful, which being in the form of a salary, the pastor himself takes periodically from the sum total of collections, pew rent, etc. It remains to sec what rights the bishop has in respect to the erection, union, division and dismembration of parochial benefices, i. e., of parishes.

In the erection *of* a new parish the bishop generally is unrestricted, there being no patrons, nor any interference on the part of the civil authorities (c. 1414-1418). But if the erection of a parish results from dividing an old parish, certain rules must be observed (cfr. *infra).*

The bishop is likewise ftee to unite parishes, although this seldom happens in the United States, save where the Catholic population in great numbers leaves a certain locality, or where a language parish has died out. But the bishop may not unite a secular parish with a religious house without permission of the Holy Sec (c. 1423). He should also confer with his diocesan consultors (c. 1428). Neither may the bishop take a parish away from religious and give it to the secular clergy if the religious had received the parish in perpetuity (c. 1422).

Very infrequent with us is the transfer of a parish, i. e., the transfer of the parish title from one church to a non-parochial church. 'I'he reason is that we have so few non-parochial churches to which the title could be transferred.

Of more importance arc the division and dismembration of parishes. A division is effected when from one parish there arise two or more. A dismembration occurs when part of the revenues or the territory of one parish is assigned to a new parish, or to an existing parish (c. 1421).

Canon 1427 permits the bishop to divide any parish for a canonical cause, and this without asking the consent of the pastor or the parishioners. This applies also to religious parishes. For, although c. 1422 denies the bishop the right to divide religious benefices, this canon is supplemented by the more specific ruling with reference to *parochial* benefices in c. 1427. And so, c. 1422 must be construed as referring to *non-parochial* benefices in charge of religious, of which we have none in the United States. Two causes arc recognized by c. 1427 as canonical for dividing a parish: I) either the difficulty of reaching the parish church due to distance or for any other cause; 2) the large number of parishioners who cannot he cared for adequately even through the appointment of assistant pastors. Here, according to c. 1428, the bishop needs the advice of the diocesan consultors, and of interested persons, especially pastors whose rights are involved.

Canon 1427 likewise permits the bishop to dismember a parish's territory, even apart from erecting a new parish, i. e., to enlarge the territory of one parish at the expense of another. This is allowed for the same reasons as the division of the parish would be allowed, and it applies even to religious parishes.

When dividing a parish the bishop of necessity dismembers its territory, and usually the goods of the old parish which are located in the part which has been severed, if there arc any. But the bishop may divide the totality of the assets which belonged to the old parish, and also the liabilities, and apportion them equally between both parishes (c. 1500). In practise, this is seldom done in the United States, for the new parishioners cannot be expected to bear the burden of the debts of the old parish since they have enough to do to build their new parish church, parish house, school, etc. It would be otherwise if the new parish were given a share of the assets of the old parish, but this, too, seldom happens since as a rule the old parish has no assets to share with the new parish, after meeting its own running expenses.

Canons 1432, 1437 permit the bishop to confer parishes at will upon any clerics save himself. But he may not confer two or more parishes on one and the same cleric, these being incompatible offices each requiring residence (c. 1439). Yet, he may confer a second parish upon a priest with the title of administrator, i.e., temporarily until the second parish gets a pastor of its own. But the conferment of some parishes is reserved to the Holy See (c. 1435). As to religious parishes, cfr. p. 265 and 277.

Pastors who culpably neglect rhe divine office arc bound to restore their salary *pro rata,* cither to the parish, the poor, or the diocesan seminary (c. 1475, §2).

Before taking canonical possession of his parish a pastor cannot exercise pastoral rights. Canonical possession is effected by induction into office. But where formal induction is not observed by reason of contrary custom, as in many dioceses of the United States, the Ordinary may dispense from the formalities of an induction, and such dispensation contained in the letters of appointment is equivalent to canonical possession (c. 1444). While this may be true of benefices in general, yet when there is question of a parochial benefice, more explicit instructions arc often given as to the precise time when pastoral rights begin, c. g., from the moment the appointee arrives in his new parish.

ART. II

Institutions Other than Benefices

Just as benefices are the means of clerical support, so there are other institutions (non-collegiate moral persons) which provide

for the needs of the laity. From the very beginning the Church regarded the poor and the afflicted as her particular wards, and accordingly founded numerous institutions for their relief. In the Eastern Church we see these institutions first appearing, and this for the simple reason that the Church developed earlier in the East than in the West. Hence, the Greek names which to this day cling to the ecclesiastical institutions under consideration. Thus we have institutions for the sick *(nosocomia),* lodging houses *(xenodochia),* foundling institutions *(brephotrophia)*, orphan asylums *(orphanotrophia),* etc. Later in the Western Church we find schools and universities under the control of the Church for the benefit of the ignorant.

Often these institutions were endowed by private individuals and entrusted to religious communities. It was not always clear how far the jurisdiction of the bishop extended in such cases: 1) because of the right of patronage claimed by the pious founder; 2) because of the almost limitless exemption of regulars prior to the Council of Trent.

The Council of Trent in placing definite limits to the exemption of regulars cleared up the question concerning the jurisdiction of local Ordinaries with respect to charitable institutions in charge of religious, or even in charge of laymen.

The local Ordinary alone grants such institutions their ecclesiastical charter of incorporation (c. 1489, §1). From that time on their goods are ecclesiastical goods, and are subject to the vigilance of the local Ordinary, and to the rules of alienation to be described in the following chapter. How the institution is incorporated under the laws of the State is a matter of fact, and incorporation varies according to the laws of the different States, cfr. infra, p. 557.

Prior to incorporation, whether ecclesiastical or civil, the institution should have a set of by-laws determining the choice and the powers of the administrator or board of directors, the name of the institution, its object, the beneficiary in the event the institution becomes extinct, etc. (c. 1490).

Once the institution has received canonical erection, the local Ordinary has the right in every case without exception to examine its financial accounts (c. 1492). He has not this right if the institution has not received the charter of ecclesiastical incorporation, c. g., if it is owned by Catholic laymen and only entrusted to the care of religious (c. 1491). The reason is that the goods of the institution are not then ecclesiastical goods, as we shall see in the following chapter. But if revenues accrue from gifts, and pious foundations,

since these are intended for works of charity or benevolence in the diocese, it would seem that to this extent the local Ordinary may demand an account from the religious.

As far as religious discipline is concerned, the local Ordinary may visit all Catholic institutions of the diocese, and inquire concerning sound doctrine, good morals, exercises of piety and the administration *of* the sacraments and sacramentals, the celebration of Mass, and the conducting of public worship (c. 1491, £2),

Without permission of the Holy See ecclesiastical institutions cannot be suppressed, united to other institutions, or converted to purposes foreign to the intention *of* the founders, unless the laws of foundation expressly allow this (c. 1494).

Chapter XV

THE TEMPORAL GOODS OF THE CHURCH

In five articles wc shall consider: 1) the nature and divisions of ecclesiastical goods; 2) the right of the Church to temporalities; 3) the owner of ecclesiastical goods; 4) the acquisition of ecclesiastical goods; 5) the administration of ecclesiastical goods.

ART. I

Nature and Kinds of Ecclesiastical Goods

§1. Nature of Ecclesiastical Goods (c. 1497)

Ecclesiastical goods are material goods, whether corporeal or incorporeal, movable or immovable, which belong either to the Church universal, or to the Holy Sec. or to an inferior *moral* person in the Church.

Goods, therefore, which belong to a cleric considered as a private individual are not ecclesiastical goods. But goods of which a cleric in an official capacity is the mere administrator, e. g., the goods of a parish, arc ecclesiastical goods. A religious with simple vows retains the ownership of his personal goods, and these are not ecclesiastical goods; hut in the capacity of superior or procurator the religious exercises rights over goods which belong to the institution. and which, therefore, are ecclesiastical goods. The goods of a Catholic society which has not been incorporated by canon law, even though it be incorporated by civil law, are not ecclesiastical goods.

The distinction between ecclesiastical and non-ecclesiastical goods is of the utmost importance. The restrictions of canon law placed upon the alienation of ecclesiastical goods, and the law requiring a financial report to be made to the Ordinary, affect only goods which belong to an ecclesiastical corporation.

§2. Kinds of Ecclesiastical Goods (c. 1497)

Ecclesiastical goods are divided into:

1) *Corporeal* and *incorporeal* goods, according to whether they can be perceived by the senses or not; to the latter class would belong all credit rights;

2) *Movable* and *immovable* goods, according to whether they can be transferred from place to place, e.g., money, vestments, etc., or cannot be so transferred, e.g., real estate;

3) *Sacred* and *non-sacred* goods, according to whether they have been set apart for divine cult by means of consecration or blessing, or not;

4) *Precious* and *non-precious* goods, the former being those which have a notable value by reason of workmanship, e. g., paintings and statues; or by reason of historical worth, e. g., manuscripts; or by reason of material, e. g., a jeweled miter. The law is not clear as to the minimum sum required before a thing can be called precious. A decision of the S.C. Counc. July 13, 1919 (*Acta* XI, 416) seems to set this sum at 1,000 lire. The same Congregation at a later date refused to be more explicit on the subject, and referred the enquirer to the Code Commission (Jan. 15, 1922; *Acta* XIV, 160).

ART. II

The Right of the Church to Temporalities

We shall consider this right in theory, and then the various ways in which church property is held in the United States.

§1. Theoretical Rights of the Church (c. 1495)

Canon 1495 vindicates to the Church universal, and the Holy See (the papal office), the inherent right independently of the civil authorities to acquire, hold, and administer temporal goods which conduce to the realization of the Church's mission. This same right is acknowledged by church law in all inferior moral persons in the Church for the natural reason that they are units within a sovereign society distinct from, and independent of, the State.

The inherent right of the Church to acquire, hold, and adminis-

ter temporal goods which are necessary or useful to the accomplishment of her divinely appointed mission on earth is a natural corollary of the general proposition already stated and proved (Introduction ch. II), to the effect that the Catholic Church is a perfect society. As such she has the right to all means necessary or useful to her legitimate mission. Among those means are temporal goods. For although the Church is a spiritual society by reason of her end (the salvation of souls through supernatural sanctification), she is not spiritual by reason of her members. These are not angels but men, they are not disembodied spirits but composed of body and soul. External means must be at the disposal of the Church to aid and foster religious sentiments in her members. Thus, the administration of the sacraments, the celebration of Mass, and the performance of other acts of public worship call for material edifices. Sacred chalices and vestments are necessary for the reverend performance of liturgical acts. Sacred ministers must be housed and supported. The poor who are the special wards of the Church by the will of Christ must be cared for, and funds must be at hand to administer to their needs, to exercise works of Christian charity and mercy, and to conduct institutions such as hospitals, orphanages, schools, homes for the aged, etc.

§2. How Church Property Is Held in the United States

Although, due to our system of separation of Church and State, neither the Federal nor the State governments regard the Catholic Church as a sovereign society by divine law, but consider her only a private voluntary association of citizens for religious purposes, and consequently deny to her, as to all other churches and sects, the right to acquire, hold and administer corporate goods in her own name independently of the civil laws, yet American legislation is not hostile to religious associations but permits them to incorporate so that their temporal possessions may be recognized and protected by the civil courts.

Since American law does not recognize the non-collegiate moral person, i. e., a sum of goods upon which the law confers juridic personality, but only physical persons can be incorporated, and since most ecclesiastical goods from the viewpoint of canon law are held by non-collegiate moral persons (institutions), saving religious organizations as such, namely, Orders and Congregations, it is necessary that the Church adopt some one of the various methods of holding goods recognized by American law. These may be reduced to four: the corporation aggregate, the corporation sole, the fee simple, and the trust. Not all of these systems are permitted

by each State, but where two or more systems of holding church property are recognized, it becomes the problem of the bishop to ascertain which of the several systems is more likely to secure ecclesiastical control over the goods of the Church in accordance with the spirit of canon law.

In the early days *of* the American Republic civil legislation permitted religious congregations (all sects) to hold their property in the form of a corporation aggregate, the trustees to be elected by the members of the congregation. Civil legislators merely accommodated themselves to conditions as they found them, for the majority of American citizens were non-Catholics and their congregations were organized on a basis of lay control. Catholic bishops in many dioceses accepted the corporation aggregate in default of a better method of holding church property. It was not long, however, before abuses arose. Trustees who themselves were laymen chosen by the members of the parish, and who had controlling authority over the temporalities of the parish, attempted time and again to dictate also in matters spiritual, e. g., by refusing to accept a pastor lawfully appointed by the bishop; and thus quarrels were constantly being taken to the civil courts and to the Holy See.

The system of lay trusteeism was soon abandoned after the First Plenary Council of Baltimore in 1829 condemned its abuses. Thereafter, some bishops resorted to the method of holding all the property of the diocese in fee simple. To hold property in fee simple means to hold it by an absolute title of ownership. For this it is not necessary that the various ecclesiastical institutions in the diocese be incorporated under the laws of the State. It suffices that all deeds to church property be conveyed to the bishop as to an absolute owner. While this system secures clerical control over the temporalities of the Church, it has its defects in other respects. Thus, it is necessary that the bishop make a last will providing for the transfer of all church property to his successor in office, otherwise the bishop's heirs can lay claim to the goods. Again, nothing forbids creditors to lay claim to church goods to recover for the private debts of the bishop. On July 29, 1911 the S. C. of the Council forbade this method absolutely (cfr. Eccl. Rev., Nov. 1911).

A third way in which church goods can be held is in trust. After the lay trustee corporation had been abandoned many bishops resorted to this system, and still cling to it for want of a better method. Here again, it is not necessary that the various ecclesiastical institutions of the diocese be incorporated under the civil law. When property is bought for an ecclesiastical institution, e. g., a parish, school, hospital, etc., the deed is made over to the bishop

not in fee simple but in trust. The property so conveyed cannot be diverted for uses other than those specified in the instrument, and this the American courts will recognize so long as the instrument has been properly drawn up according to the formalities of the civil law. This system eliminated the defects inherent in the fee simple idea, and in theory accords with canon law in placing control over ecclesiastical goods in the hands of the bishop or his delegate. But in practise the civil courts have often viewed the bishop as a mere dry, passive, silent trustee, regarding each congregation as the real, actual owner of the property with powers to conclude contracts, even contracts of sale, without the bishop's consent.

A few states recognize the system known as the corporation sole. This was borrowed from England where the king, each bishop, dean and parson is a corporation sole. In the corporation sole only one physical person is incorporated, and thus the system differs from the corporation aggregate. It bears no similarity to the non-collegiate moral person of canon law, for here the temporal goods arc incorporated, whereas in the corporation sole a physical person is incorporated, and by means of such incorporation all his rights are preserved entire to his successor in office. It can be resorted to by Catholic bishops only in those American States which permit corporations sole. All property is vested in the bishop as sole trustee and administrator, and thus clerical control is assured. Another advantage is that upon the vacancy of the episcopal see all church property in the diocese passes to the bishop's successor without any need of further formalities. The disadvantages of the system are: 1) that during the vacancy of the see no business can be transacted since the title to all church property is held in abeyance; 2) the rulings of statute law and court decisions in America are very sparse so that it is difficult to determine the exact nature of the corporation sole and the powers of the bishop, e. g., can the corporation sole take personal as well as real property, can the bishop alienate the property of a parish without the consent of the parishioners, i. e., is he a mere dry, silent trustee?, etc.

Where the corporation aggregate could be introduced which would at the same time give the ecclesiastical superiors controlling authority over the temporal goods of the Church, this would be preferable to the corporation aggregate of former times which vested all authority in the laity. It would be preferable also to the corporation sole and the trust system. Such a corporation aggregate exists under the laws of New York State. The main features of the system are: 1) each parish is incorporated with rights to the goods

vested in the members of the parish, but; 2) the board of trustees of the parish arc not exclusively laymen chosen by the parishioners, but the board consists of the bishop, the vicar-general, the pastor and two laymen of the parish, and thus clerical control is assured; moreover, 3) episcopal sanction is made necessary for the validity of the acts of the trustees, or board of directors; and finally; 4) the bishop has absolute power to divide a parish and apportion its goods as he sees fit.

The New York system of parish incorporation has been recommended by the S. C. of the Council (July 29, 1911; Eccl. Rev., Nov. 1911). The difficulty of introducing it throughout the Republic lies in the fact that individual States are slow to grant charters of incorporation which deviate from the common forms recognized in the State on the theory that this would imply a special privilege.

On the subject discussed under the present heading the reader may profitably consult the Canonical Studies listed on p. 78, 79 of this manual, from which we have quoted profusely.

ART. III

The Owner of Ecclesiastical Goods
(c. 1499, §2)

Prior to the Code the person in whom the ownership of ecclesiastical goods was to be considered vested was a question much disputed among canonists. Their opinions can be reduced to three:

1) *The supernatural theory.* This was held by all writers who vindicated to God or the saints direct ownership of all church property. While seemingly confirmed by various texts of Scripture, yet it must be viewed as a mystical theory at the most. It is true that God owns the property of the Church as well as that of the State, but the question is who under *human* law must be considered the owner. To reply that God is the owner would necessitate bringing God to court when suits are brought against church property, and since God cannot be brought to court all suits would have to be dismissed for lack of jurisdiction.

2) *The theory of papal dominion.* Advocates of this opinion vested the ownership of all ecclesiastical goods in the Pope. That the Pope could declare himself owner of all church property seems possible; that in fact certain Popes had so declared themselves to this effect in the past, as the proponents of the theory claimed, was the question at issue.

3) *The theory of institutional ownership.* Some pre-Code writers advanced the opinion that dominion over church property is vested in each particular church or ecclesiastical institution which happens to possess the goods in question. This opinion has now been embodied in c. 1499, §2 which states that the ownership of goods to be exercised under the supreme authority of the Holy See belongs to that moral person which lawfully acquired the goods.

It must be remembered that the principle just enunciated to the effect that each institution in the Church is owner of its own property applies even where, according to civil law, all property in the diocese is vested in the bishop as a trustee, a corporation sole, or (as formerly) in fee simple. The bishop, therefore, would have no authority from the viewpoint of canon law to transfer the goods of one institution to another institution in ownership, saving the case of dismembration of a parish. And although the civil court would uphold him, the individual institution through its administrator could have recourse to the Holy See. Religious organizations (Orders and Congregations) arc usually incorporated under the American civil law in the form of corporations aggregate. Sometimes the individual houses of the religion are incorporated, sometimes only the religion or the province. Where the religion or province alone is incorporated, and no matter how the civil law may view the situation, the general or provincial would be powerless to appropriate the goods of the individual houses, e.g., their superfluous revenues, unless the constitutions *explicitly* conferred this power upon him, a supposition which, if verified, would seem to militate against c. 1499, §2.

ART. IV

Acquisition of Ecclesiastical Goods
(c. 1499-1517)

In virtue of her divine sovereignty and independence of the State, the Catholic Church may acquire temporal goods in any way sanctioned by divine law (c. 1499. §1). As a matter of fact, however, the Church conforms to the rulings of civil law, and canonizes it, saving a few exceptions where she lays down norms of her own, especially in the matter of prescription.

We shall pass over in silence the historical methods of acquiring church property, especially the system of tithes and first fruits of which c. 1502 speaks, and we shall consider only the present day modes by which ecclesiastical goods are acquired. These may be

reduced to nine: 1) dismembration of corporations; 2) extinction of corporations; 3) alms begging; 4) the cathcdraticum; 5) assessments; 6) fees and perquisites; 7) prescription; 8) free-will offerings; 9) contracts.

§1. Dismembration of Corporations

When the territory of a moral person, e. g., a parish, is divided, and either a new moral person comes into existence, or part of the territory which has been dismembered is united to an already existing corporation, in these cases the competent ecclesiastical superior who effected the division has the right to apportion both the resources and the debts which had been common to the divided territory between both corporations, observing equity, the intention of the founders (if any), the intention of donors, lawfully acquired rights, and particular statutes by which the moral person whose territory has been divided may possibly be governed (c. 1500). The first way, then, in which ecclesiastical goods may be acquired is by assigning to a moral person a part of the goods of another moral person whose territory has been divided.

§2. Extinction of Corporations

A second way in which ecclesiastical goods are acquired is by the extinction of a moral person. Here the goods of the extinct corporation become those of the corporation immediately superior to it, c. g., the goods of a suppressed religious house go to the province, those of a suppressed parish go to the diocese, etc. But the intention of the founders and donors, lawfully acquired rights and the particular statutes of the extinct corporation, must be safeguarded (c. 1501). The limitations regarding the intention of founders, particular statutes, etc., mentioned in this and the preceding section will hardly be verified in the case of American parishes; they are more likely to be verified in the case of a college, hospital, orphanage, etc., endowed by private individuals.

§3. Alms Collecting

A third way in which church goods may be acquired is through the collecting of alms. That abuses in this matter mav be avoided c. 1503 forbids Catholic laymen, as well as clerics in a private capacity, to solicit alms without either the permission of the Holy See. or the written permission of both their own Ordinary and the Ordinary of the place where the alms are to be solicited. This

applies when aims are asked for a pious or ecclesiastical institution or aim, not e.g., for civic purposes, like the community chest, since the Church cannot be held responsible for abuses in the latter case. I hc prohibition docs not extend to clerics acting in an official capacity, c. g., the pastor is allowed to collect for the parochial school and all parish projects, and he may authorize some society to act as his agent, provided the soliciting of alms is confined to his territory. Concerning the right of religious to go in quest of alms we have already spoken.

The begging of alms through the mail is not contemplated here, but rather begging by personal approach because of the greater abuse possible, c. g., insufficient deliberation on the part of the donor, the embarrassment in refusing alms to the personal caller, etc.

§4. The Cathedraticum

The cathedraticum is a moderate annual tax paid to the bishop, or the episcopal chair *(cathedra)* as a token of subjection to the episcopal see. It must be paid by all churches, benefices and lay confraternities subject to the bishop's jurisdiction. It should he added that the parishes of religious in the United States are benefices subject to the bishop (c. 1504).

For centuries the amount of the cathedraticum was fixed at two *solicit* (about 90 cents in present American money). The Code rules that the amount should be determined by the provincial council, or by a convention of the bishops of the province, unless it has already been determined by long-standing custom. In the United States the cathedraticum is resorted to also as a means of episcopal support, and usually takes the form of an assessment placed on each parish of the diocese in proportion to the resources of the parish. On Mar. 14, 1920 *(Acta* XII, 444) the S. C. of the Council forbade the bishops of France to levy a cathedraticum on parish churches in proportion to the number of parishioners in order to meet the expenses of the chancery office, since this would be foreign to the purpose of the cathedraticum, and, moreover, the cathedraticum should be uniform for all parishes. It does not seem that this declaration extends to the United States: 1) because it is a particular, not a general, answer; 2) because the circumstances of the two cases arc not parallel; the bishops of France wished to *introduce an innovation;* the bishops of America in regarding the cathedraticum as a source of episcopal support are merely recognizing the force of long-standing custom.

§5. Assessments

The Code limits the right of the bishop to place assessments to four cases: 1) he may levy a tax for the support of the seminary, unless he prefers to substitute this by a collection taken up in the churches at stated times; 2) he may assess a parish which has been resigned so as to provide a pension in favor of the resigning pastor; 3) when some special need of the diocese warrants it, e.g.. extraordinary repairs of the cathedral church, a visit *ad limina,* etc., the bishop may impose by way of exception a moderate tax on all beneficiaries (not benefices), whether secular or religious; 4) when the bishop gives to an institution its charter, or consecrates a place, he may impose an assessment on the institution or the place (c. 1505-1506).

The limitations imposed here by the Code to the assessing powers of the bishop can hardly be applied to the United States. The Code at this place is legislating for countries where the State erects parish churches, schools, hospitals, etc., and maintains them, besides providing salaries for the clergy. In our country the Church is not subsidized by the States, but by the free-will offerings of the faithful. Ordinarily the voluntary contributions of the faithful are relied upon to finance diocesan works of charity, but when circumstances advise the assessment instead of collections taken up in the parish churches for diocesan projects, e. g., because of the negligence and indifference of some pastors in taking up such collections, nothing seems to impede the bishop from imposing assessments.

§6. Fees, Perquisites and Salaries (c. 1507)

By fees and perquisites we understand offerings of the faithful made on the occasion of receiving spiritual favors, whether the granting of such favors involves the exercise of ecclesiastical jurisdiction, e. g., dispensations, or the exercise of the power of orders, e. g., the sacraments, Christian burial, blessings, and other sacramentels. From the very first it was seen that such offerings could easily lead to simony on the part of the clergy, or to a suspicion of simony on the part of the faithful, and repressive legislation abounded. Later, when the faithful came to understand that the offering could be considered not as a price for things spiritual, but rather as a method of contributing to the support of the clergy, they took the initiative in many places and made spontaneous, voluntary offerings on the occasion of spiritual ministrations. In time

thev become obligated thereto in virtue of law arising from custom. On June 10, 1896, the S. C. of the Council (*d.S.S. XXIX.* 433) issued a decree which has been substantially embodied in c. 1507.

Expenses incidental to formal ecclesiastical trials are to be determined by the provincial council, or a meeting of the bishops of the province (c. 1909). But the schedule of fees in this case need not be approved by the Holy See.

Fees cannot be exacted for marriage dispensations saving a slight emolument to cover the expenses of the chancery, but even this should be waived in the case of the poor. This applies when the local Ordinary proceeds in virtue of ordinary jurisdiction, e. g., when he dispenses from the banns. When the bishop grants marriage dispensations in virtue of quinquennial faculties of the Holy See, it is generally stipulated in the faculties themselves how much of the designated fee the Ordinary may retain for the chancery, the residue to be forwarded to the Holy See at the end of each year (c. 1056).

In the matter of funerals it is the right of the local Ordinary alone to draw up a schedule of fees that can be exacted for various classes of funerals; hence diocesan statutes must be consulted here (c. 1234).

Concerning all other acts of voluntary jurisdiction, namely all acts exclusive of marriage dispensations and funerals, it belongs to the provincial council, or to a meeting of the bishops of the province to establish a uniform schedule of fees. But this schedule will have no effect until approved by the Holy Sec (Congr. of the Council). This is the law of c. 15O7, and it has been in force since 1896. Where no provincial council has been held since that date, or if held, no list of fees has been drafted, it belongs to diocesan law or custom to determine the amount of the fees. But pastors arc not permitted to *demand* the customary stole fee in the case of the poor, nor even in the case of the non-poor. The Holy See permits that laws be enacted obliging the payment of stole fees so that those who refuse to obey the law without just excuse can be held guilty of sin. The pastor has no right, however, to enforce this law to the extent of refusing the sacraments and sacramentals to recalcitrants.

We stated that stole fees contribute to the pastor's maintenance. This is true even where the pastor derives a salary, as most pastors do. The amount of the salary, it would seem, should be so fixed by the bishop that when taken alone it will not suffice to sustain the pastor becomingly, but only when taken in conjunction with stole fees.

§7. Prescription

Another way in which ecclesiastical goods are acquired is through prescription. On this point the Code adopts the civil law of each nation, saving the following exceptions:

1) The following are not subject to prescription: a) rights established by divine law, e. g., the common privileges of clerics: b) rights which can be acquired only by Apostolic induit, e. g., the privilege of a portable altar; 3) spiritual rights so far as laics are concerned, e. g., the right to choose and canonically institute their own pastor; 4) definitely determined limits of ecclesiastical provinces, dioceses, parishes, vicariates and prefectures Apostolic, abbacies and prelacies *nullius;* 5) an ecclesiastical benelice without the appearance of a *bona fide* title; 6) Mass stipends and obligations; 7) the right of visitation and the right to obedience on the part of some ecclesiastical prelate; 8) the payment of the cathedraticum (c. 1509).

2) Sacred things (blessed or consecrated things) which are in the possession of *private* individuals can be acquired through prescription by other private individuals, e. g., a priest can lay lawful claim to a chalice which has been in his peaceful possession for years, although it is now proved to have belonged to another priest originally. Sacred things which belong to *moral* persons in the Church can be prescribed by other ecclesiastical moral persons, but not by a physical individual (c. 1510).

3) A period of 100 years is required to prescribe against immovable, or even movable precious goods, and rights and actions (law suits) belonging to the Holy See. A prescription of 30 years suffices when such goods, rights or actions belong to any other moral person in the Church (c. 1511).

4) Good faith is required in him who prescribes. This is true not only at the beginning, but during the whole time necessary to prescribe (c. 1512).

§8. Free-Will Offerings

The Church today, at least in the United States, receives most of her temporal goods through the free-will offerings of the faithful *(piae fidelium voluntates).*

These may be outright gifts in the sense that they do not call for an extended administration. To this class belong plate collections, poor-box offerings, pew rents, funds raised through bazaars, drives, picnics, subscriptions, etc. Such gifts when made to rectors of churches, even to rectors of religious churches, arc presumed to be

made to the church, not to the rector, unless the contrary is evident (c. 1536).

If a gift is such that it calls for continued administration, e. g., a student burse, the Ordinary should be notified thereof, for the law makes him the original executor of all pious trusts. A simple cleric is not competent to accept such gifts which necessitate administration over an indefinite period of years, for he has no authority to pass this obligation on to his successors in office. The Ordinary will judge whether the gift should be accepted, and how it must be invested. If the gift is made and intended for a clerical exempt religion so that the religion itself becomes the beneficiary, the competent Ordinary is the major religious superior. But if the gift is intended for works of benefaction to be performed in the parish or diocese, and even though the pastor is an exempt religious, the competent Ordinary is the bishop (c. 1516).

The rules in the above two paragraphs apply to all free-will offerings, whether they be made by the living with no thought of death in mind *{actus inter vivos),* or whether they be made in such a way that they become effective only upon the death of the donor. To the latter class belong: 1) *donationes mortis causa,* where immediate possession is transferred but not ownership, as where a Catholic in good health offers a sum of money for Masses to be said upon his death; 2) *piae ultimae voluntates,* i. c., last wills that dispose of one's entire estate in behalf of pious causes; 3) *legata pia,* or pious legacies that dispose by way of gift of part of the testator's goods. Both last wills and legacies transfer possession and ownership only upon the testator's death.

In a doubt concerning the testator's intention, c. g., he left a sum of money for Masses without specifying whether he desired low or high Masses the Ordinary would seem competent to interpret the last will (c. 1515, §1). But if the intention cf the testator is by no means vague, yet cannot be satisfied, it is the right of the Holy See to commute or divert the gift to some other pious cause or object (c. 1517, §1).

Concerning pious foundations, since these are bilateral contracts rather than free-will offerings, we shall say a word about them in the following article.

§9. Contracts

The Church can acquire goods also by way of contract, e. g., through purchase. We shall consider the subject of contracts in the following article, namely, as an act of administration, rather than as a means of acquiring temporal goods.

ART. V

Administration of Ecclesiastical Goods

The administration of goods, as distinct from their acquisition, comprises ever}' act which tends to conserve the goods or to increase their value. This sometimes necessitates their alienation. We shall first consider the general rules of administration, and then the particular rules which govern alienations.

§1. General Rules of Administration

Authority of the Roman Pontiff—The Pope is the supreme administrator and dispenser of all ecclesiastical goods (c. 1518). As supreme administrator he may enact rules of administration binding in the universal Church, and such rules are contained in c. 1519-1543 of the Code. As supreme dispenser of ecclesiastical goods, the Pope, while not the owner of the goods, may still exercise the right of eminent domain, and transfer the ownership of goods from one moral person to another. He may even transfer title of ownership to the State in the case of goods which the State has unjustly confiscated. A just reason is required for the licitness of such transfer, c. g., the resultant harmony between Church and State which benefits the whole community even though the individual may suffer.

Authority of the local Ordinary—The local Ordinary is the administrator of the goods which belong to the diocese as such, and this right he may exercise through delegates. In respect to other temporalities in the diocese the local Ordinary exercises supreme surveillance over their administration, saving goods which belong to religious communities, but even here he may exercise vigilance within the limits explained on p. 324-326, namely, as regards the investment of certain goods, and as regards the right to exact an annual financial report in certain cases there described. But the local Ordinary is not a dispenser of the goods of the Church in his territory, and he may not transfer the title of ownership from one moral person to another, save in the case where a parish is dismembered, as wc have seen.

The local Ordinary· exercises surveillance over the administration of the temporal goods of the Church in his territory especially in four ways: 1) when he supplements the general rulings of the common law by more specific rulings in the form of diocesan statutes, e.g., by determining the amount which cannot be expended

by inferior administrators without his permission: 2) when he makes a canonical visitation of the various parishes and institutions subject to him in the matter, and examines the financial books; 3) when he goes over the financial reports submitted to him annually by inferior administrators; 4) when he grants necessary permission to inferior administrators in cases which exceed the bounds of ordinary administration.

It is the duty of the local Ordinary to appoint a diocesan board of administration whose advice, and even consent where this is required by law, he will seek. The board is to consist of three members, one being the local Ordinary acting as president, the other two members to be versed in civil law if possible (c. 1520). The local Ordinary must also appoint administrators for those institutions which are without any (c. 1521). Usually when an institution is incorporated under the civil law, the charter specifics who the administrators are to be, the local Ordinary having approved of the specific form of incorporation beforehand. Hospitals, colleges, religious organizations etc., often have several members on the board. In the case of parishes the pastor is *ipso facto* the administrator in subordination to the bishop. He is often assisted by lay trustees either in virtue of the civil charter of incorporation, or in virtue of diocesan law. Whether the lay trustees act only in an advisory capacity, or have actual restraining powers, is a question of fact to be determined by the particular law of civil incorporation.

Duties of administrators inferior to the local Ordinary—The local Ordinary merely *supervises* the administration of the temporalities in the diocese. Each institution according to canon law must have its own administrator in subjection to the local Ordinary. The obligations incumbent upon the latter are:

1) To draw up and preserve an inventory of the goods of the institution (c. 1522);

2) To see that the goods are not damaged, destroyed or lost (c. 1523.П. 1);

3) To deposit in safekeeping, and to expend, the revenues in accordance with particular law, and the wishes of the donors (c. 1523, n.3);

4) To invest in safe and profitable investments, and with the consent of the local Ordinary, whatever funds and revenues remain over and above the running expenses (c. 1523, n. 4);

5) To keep a book of income and expenditures (c. 1523, n. 5);

6) To preserve all deeds and valuable commercial papers,

e g insurance policies, in the safe (archives) of the institution (c. 1523, n. 6);

7) To submit a yearly financial report to the local Ordinary (c. 1525);

8) To refrain from starting a lawsuit without the local Ordinary's permission, or (in urgent cases) the permission of the rural dean (c. 1526);

9) To remain within the limits of ordinary administration as defined in particular law, otherwise the transaction will be invalid, and the administrator—not the Church—will he responsible (c. 1527). Acts of ordinary administration are those which the particular law, e. g., the diocesan statutes permit the administrator to perform without previous permission of the local Ordinary, e.g., to make expenditures for the ordinary running expenses of the institution, and for improvement, up, c. g., to $200. Acts of extraordinary administration arc those for which the law requires the previous consent of the higher superior.

§2. Rules Governing Alienations

A. Alienations in General

By alienation in canon law we understand the transfer of title to church property, whether the transfer is absolute, c. g., in sales, or conditional, e.g., in mortgages; whether ownership is transferred or only the use. provided the condition of the church thereby becomes less secure, e.g., in a lease (c. 1533).

The alienation of church property is usually effected by means of contract. Whatever the civil law in the particular place where the transaction occurs legislates concerning the making of contracts and the contracting of debts, that the Church also adopts, save where the civil law runs counter to divine law, or church law has regulations of its own (c. 1529).

In every alienation of ecclesiastical goods the following formalities are required, saving the case of perishable goods:

1) That written appraisal of the worth of the goods be made by experts;

2) That urgent necessity, or evident utility to the Church, justify the alienation;

3) That the permission of the competent ecclesiastical superior be obtained beforehand;

4) That the goods be sold, or leased, at public auction;

5) That the money realized from the transaction be placed in safe and profitable investments (c. 1530, 1531).

Only the formality which requires the previous permission of the competent superior seems necessary for the *validity* of the alienation. As to the other formalities, custom, prudence, etc., may dictate a departure from them, e. g., it may be more prudent to conduct a private sale, than an auction.

Competent to permit the alienation of ecclesiastical goods is:

1) The Holy See in the case of (a) precious goods as described on p. 556; (b) goods of any kind whose value exceeds 30,000 lire or francs (c. 1532, SI). The gold lira or franc is here understood in accordance with the practice of the Roman Curia. This lira corresponds to approximately 20 cents in American currency. Hence, 30,000 lire or francs would be $6,000. On July 20, 1929 (*Acta* XXI, 574) the Code Commission answered that the permission of the Holy Sec is required when several articles arc to be alienated and they exceed in value 30,000 lire or francs when taken collectively, even though the individual items do not, e. g., if a library is sold piecemeal.

2) The permission of the local Ordinary suffices for the alienation of goods whose value lies below 1,000 lire ($200). But the local Ordinary may not grant this permission without the previous consent of all interested parties, and until he has consulted the diocesan hoard of administration, unless the matter is of trilling importance (c. 1532, §2).

3) The permission of the local Ordinary likewise suffices to alienate goods whose value exceeds 1,000 but falls short of 30,000 lire. But here the Ordinary must not only have the consent of the interested parties, and hear his diocesan board of administration, but he must in addition have the *consent* of the diocesan consultors (c. 1532, §3).

When permission is sought to alienate divisible goods, the petitioner must specify what amount of the goods has already been alienated, otherwise the rescript will be invalid (c. 1532, §4).

The Church has the right to bring *personal* action against all who contract debts without the above described permission, and against their heirs; and to bring a *real* suit against the actual possessor of the ecclesiastical goods which have been unlawfully alienated, safeguarding the right of the bona fide possessor to recover the amount he paid to the delinquent administrator (c. 1534).

B. Alienations in Particular

Donations— Prelates, rectors of churches, and other ecclesiastical administrators, arc forbidden to make gifts of ecclesiastical goods, save in small amounts as sanctioned by local custom, and onh then

for reasons of gratitude, piety, or Christian charity; otherwise their successors in office can recall the gift (c. 1535). An administrator, e. g., a pastor, may not refuse a gift made to the institution except by permission of the Ordinary, otherwise he can be held to indemnify the institution (c. 1536).

Sales— In the sale of sacred articles the price must not be increased in view of the consecration or blessing attaching to the article (c. 1539, §1). Administrators inferior to the local Ordinary must not exceed the bounds of ordinary administration, but if the sale exceeds the sum defined by local law, the Ordinary's permission is required for the validity *of* the transaction, as we saw.

Loans— When sacred things are loaned (things blessed or consecrated), they may not be put to uses foreign to their purpose (c. 1537). A loan *{commodatum)*, understanding this as a gratuitous transfer of the use of a thing, is not an act of alienation provided the person who loans the thing reserves to himself the right to recall it at his good pleasure. The condition of the Church docs not then become worse in the sense of c. 1533.

If by loans we understand the contracting of debts, i. e., the borrowing of money, this is an act of alienation, and the Ordinary's permission is necessary for validity when the amount to be borrowed exceeds the limits defined in the diocesan statutes. When loans arc contracted, church goods are usually offered as collateral or security in the form of a mortgage or lien, and thus the goods so weighed down by obligations become less secure; indirectly they are being alienated (c. 1533).

Mortgages— Here the same rules apply as in the case of loans, i.e., church goods may not be mortgaged if the value of the loan exceeds the amount determined by diocesan law as constituting acts of ordinary administration (c. 1538).

Exchanges— When sacred things (things blessed or consecrated) are exchanged, they may not be given a higher appraisal by reason of their consecration or blessing (c. 1539). An exchange is an act of alienation, and if the value of the goods which are exchanged exceeds the bounds of ordinary administration, the Ordinary's permission is required. This applies also to an exchange of bonds and securities (c. 1539).

Real estate belonging to the Church is sometimes leased, e. g.. ground which has been bought by the parish with a view to constructing a church eventually when financial conditions permit. It may happen that such land offers goods prospects to some business concern in the meantime because of its location in a large city, and is temporarily leased to the concern.

The permission of the Holy See is required to lease church property when the lease extends beyond nine years and the value of the property exceeds $6,000. The local Ordinary can grant permission if either the lease is less than nine years, or if over, the value of the property is below $6,000. But the local Ordinary must ask the advice or consent of the diocesan board of administration, or of the diocesan consultors, depending on the worth of the property or the extent of the lease as explained in greater detail in C. 1541.

Investments, purchases, expenditures—Although these acts are not always acts of alienation, yet the permission of the Ordinary may be necessary. Thus, c. 1523, n. 4 imposes upon the administrator the obligation of seeking the consent of the local Ordinary to invest money belonging to a church, e. g., by investing it in real estate, or bonds. But without the local Ordinary's permission a pastor may deposit money in the bank for safe-keeping (c. 1523, n. 3). Purchases and expenditures which do not exceed the bounds of ordinary administration do not call for the previous permission of the local Ordinary.

Note—The alienation of goods belonging to a religion is governed by further laws considered elsewhere. That is to say, while the Apostolic induit is always required to alienate goods whose value exceeds $6,000, yet to alienate goods below that value the permission of the competent religious superior suffices, and the permission of the local Ordinary is not necessary save in the case of a monastery of nuns, and in the case of religious of diocesan law.

§3. Pious Foundations

These are temporal goods given to any moral person in the Church with the perpetual or long-standing obligation of saying Masses, conducting divine services, or performing works of piety and charity with the annual income realized from the capital investment of the pious foundation. It is a bilateral contract belonging to the *do ut facias* class of general contracts that lack a specific name; hence not a *purchase,* nor *sale,* nor *loan,* or any other such named contracts (c. 1544).

As in the case of free-will offerings that call for continued administration, so too pious foundations cannot be accepted without permission of the Ordinary, i.e., the major religious superior if the foundation is in the church of exempt clerical religions, but the local Ordinary in all other cases (c. 1550).

Note that while pious foundations and certain free-will offerings agree in this that both require continuous administration, yet

they differ in that pious foundations carry a burden., c. g., to say Mass on certain days annually in a determined church, and therefore, must Im? regarded as bilateral contracts, whereas a student burse is a free-will offering, i. c., a donation, and carries with it no burden other than to invest the capital and draw upon the revenue or annual interest.

It is the right of the Ordinary to determine the sum within which pious foundations can be accepted (c. 1545) ; as where he would set $500 as the minimum sum for one foundation Mass.

Sometimes it may happen that the original capital which constituted a pious foundation proves insufficient to meet the burdens agreed upon. Wars and other causes often bring about a deflation in the value of a country's currency. In that case the obligations can be reduced. If Masses must be reduced, c. g., one is said every two years instead of annually, only the Holy Sec may permit such reductions. But if the obligation attaching to a pious foundation is one that has nothing to do with .Masses, e. g., conducting special services so many times a year at a certain altar, the Ordinary will be competent to allow such reductions (c. 1551, 1517).

ON PROCESSES

Thus far we have learned what may be called the substantive law of the Code. We pass now to procedural law. This has for its purpose the *enforcement* of the substantive law.

Canonical processes arc simply certain sets of formalities which the competent church authorities must observe when they execute the law.

In most cases the law is administered or enforced outside of court by superiors exercising only their administrative jurisdiction. Usually this is done by means of the superior's precepts, commands, instructions, regulations, etc. Here the superior is generally allowed a great degree of latitude as to the manner of proceeding. Only by way of exception does the law lay down a prescribed series of formalities. Such cases of formalities we find prescribed for proceeding against clerics charged with certain offenses, or for the removal of pastors for purely administrative non-penal reasons (cfr. p. 653 ff.), also for the infliction of suspension *ex informata conscientia,* as well as for the dismissal of religious in non-exempt religions. Whenever the superior enforces the law outside of court, whether he proceeds according to a well prescribed set of norms, or according to his best judgment, he is said to proceed administratively, summarily, extrajudicially, or in the canonical language of the Church, *via administrativa, via disciplinari, via oeconomica.* Every administrative branch of government must have authority to review complaints; and to make decisions that come up in the ordinary course of its work in enforcing laws, provided the

questions involved arc not too complex, or involve issues of too serious a nature. See also p. 651 in this connection.

When, however, it is desired to enforce the law with stricter justice to all parties, whether the dispute concerns one's spiritual or temporal rights, or one's status under the law, e.g., as to whether one is validly married, and if the question is sufficiently involved and the evidence not altogether clear so that a rather length}' procedure is advisable, in such cases of graver moment, the controversy is usually reserved to the courts. The reason is that courts are regulated by stricter forms of procedure, i.c., by solemnities which aim to secure greater exactness in the establishment of facts, and the utmost correctness in the interpretation of the law

To the courts the canon law reserves the following matters: (1) disputes involving rights to temporal goods; (2) disputes concerning one's legal status, for which wc have marriage and ordination trials; (3) criminal charges where the accused is liable to punishment. In all other matters the law is enforced administratively.

The decisions of the courts are called *sentences,* and to secure even greater justice the law allows *appeal* to the higher court with suspensive effect. On the other hand, the decision of the superior acting extrajudicially is called a *decree,* and the remedy against decrees is called *recourse,* which is taken to the next higher administrative superior, the remedy allowing no suspensive redress so that the decree must be observed in the meantime. For if recourse were allowed with suspensive effect from every order of the superior, there would be an end to all authority. This principle is upheld in civil legislation as well as in canon law. Sometimes church law does grant recourse from administrative decrees with suspensive effect, but then this must be expressly stated in the particular canon or law.

To express these thoughts the Code uses the words: *in suspensivo* and *in devolutivo.* 'I'he latter term can be translated "with non-suspensive effect" the former "with' suspensive effect." Both terms occur repeatedly throughout the Code, as may have been noticed.

The Fourth Book of the Code is divided into three parts: (1) On trials; (2) On beatifications and canonizations; (3) On extrajudicial processes to be observed in six specified cases there enumerated. We will treat all this matter in the order followed by the Code, confining our attention to the general outlines, as the nature of our manual does not permit a detailed study of all the canons in this part of the Code.

Part One

ECCLESIASTICAL TRIALS

We shall under this heading consider: (1) trials in general; (2) civil trials; (3) criminal trials; (4) marriage trials; (5) ordination trials.

Chapter I

TRIALS IN GENERAL

We shall consider: (1) the nature and kinds of ecclesiastical trials; (2) the competent forum; (3) lower courts and appellate courts; (4) the introductory stage of the trial; (5) the probative stage of the trial; (6) the final stage of the trial.

ART. 1

Nature and Kinds of Ecclesiastical Trials

§1. Nature of an Ecclesiastical Trial

An ecclesiastical trial is the legal discussion and settlement of a controversy in the ecclesiastical court concerning some matter wherein the Church is competent to judge (c. 1552, §1). First, it is a *discussion,* and this supposes conflicting claims made by two or more parties. Secondly, it is a *settlement,* and this is effected by the sentence of the judge. Thirdly, it is a *legal* discussion and settlement, i e., conducted in accordance with the rules of procedure laid down for an ecclesiastical trial in Part I *of* Book IV of the Code. Discussions and settlements of disputes conducted otherwise are not necessarily illegal; they simply are not ecclesiastical trials; they are extrajudicial processes. Fourthly, it is a discussion and settlement of some matter wherein the *Church is competent to judge,* namely:

With respect to the State, c. 1553 vindicates to the Church the original and exclusive right to take cognizance of:

(1) All questions which involve spiritual interests, or temporal interests which are related to matters spiritual, e.g., the validity of the marriage bond in the first case, and a pastor's right to the revenues from his benefice in the second case.

(2) All violations *of* divine, canon, and civil law to the extent

at least in the last ease of defining moral guilt and punishing the offender with ecclesiastical punishments, e.g., heresy;

(3) All causes of those persons who enjoy the privilege of the forum, both their contentious as well as their criminal causes, provided the persons in question are the defendants, or the accused.

The foregoing questions the Church judges by inherent and exclusive right (c. 1553, Si). The right is *inherent* because it is a postulate of the Church's sovereignty, and therefore one which is derived from God directly, independently of the State. The right belongs to the Church *exclusively* in the sense that the State cannot claim concurrent jurisdiction in those questions. But, adds c. 1553, §2, in *mixed* questions the Church and State arc equally competent to judge, and the rule obtains that the court which first takes cognizance of the case thereby excludes the other. An example of mixed causes is a breach of promise suit in marriage cases (Code Comm., June 3, 1918; *Jeta* X, 345).

§2. Kinds of Trials

Ecclesiastical trials may be divided as follows:

(1) *Criminal* trials and *contentious* trials. A criminal trial is one which has for its object to ascertain whether the law was violated, and, if so, to apply the *penalty* decreed for the violation (c. 1552, §2, n. 2). All other trials arc contentious trials, and have for their object either the prosecution or vindication of rights, or the declaration of juridical facts (c. 1552, §2, n. 1). To the class of contentious trials belong:

(2) *Civil* trials, *matrimonial* trials and *ordination* trials. By a civil trial in the Church we understand any trial which has for its object the prosecution or vindication of rights to temporalities, whether the defendant is an individual cleric, religious, or novice, or an ecclesiastical moral person. Thus, if a cleric or a religious organization, or a confraternity is sued for unpaid debts, these would be civil trials. Matrimonial trials are those in which the validity of a marriage is contested, the question of legitimacy of offspring is discussed, or one spouse sues for a separation from bed and board. Ordination trials are those in which either the validity of major orders is contested, or the obligations arising from major orders arc attempted to be waived.

(3) *Formal* trials and *summary* trials. This division no longer holds under the Code, except in marriage cases for which we have a lengthy solemn trial, as well as a shorter trial in which the main evidence consists of a single authentic document, as we shall see at the proper time.

ART. II

The Competent Forum

(Canons 1556-1568)

Forum originally meant the place where all public affairs were transacted. Several such fora can still be found today in the Eternal City as relics of early Roman days. Later, *forum* designated the place where only judicial proceedings were held. Still later, and at present, it means the court, or the judge who conducts the trial. To speak of the competent forum, then, is to speak of cither the competent court or the competent judge. Moreover, by competency we mean jurisdiction with respect to certain persons, places and matters.

In the preceding article wc described the competency of the ecclesiastical courts with respect to the civil courts. Here it remains to determine the competency of the various ecclesiastical courts with respect to one another.

Competency of inferior ecclesiastical judges with respect to the Roman Pontiff or his courts—The Roman Pontiff being the supreme head of the Church with the fullness of jurisdiction, both legislative, administrative and judicial, can be judged by no one. Not by any individual bishop or by any council, since the Pope is the supreme bishop and is above even a general council. Not by any layman, even the civil ruler, because of the privilege of the forum. The sovereign person of the Pontiff is recognized even by international law.

The judicial jurisdiction of the Roman Pontiff is not only supreme in the Church, it is likewise *universal* and extends *immediately* to each and every member of the Church, all the faithful being his immediate subjects. In practise, however, the Pope docs not exercise universal judging authority but reserves to himself, or to his tribunals, only certain questions, leaving the jurisdiction of other bishops in their respective dioceses intact.

(1) To himself personally the Pope reserves:

(a) All causes of the supreme Christian rulers of States, of their children, and of those who have the right of immediate succession to the supreme rule, e.g., their marriage cases;

(b) All causes of cardinals and papal legates;

(c) ' Criminal charges against bishops (c. 1557, §1).

(2) To the Roman Rota the Pope reserves:

(a) Civil lawsuits against residential bishops excepting

lawsuits contained in the next two sentences (c. 1557, §2). If the personal goods of the bishop are sued, or the capital endowment of his episcopal benefice (a situation not verified in the U. S.)—in these cases the controversy may be settled at the option of the bishop either by a collegiate tribunal of his diocese, or by the next higher court, i.e., the court of the archbishop as a rule (c. 1572, §2). But where a person wishes to sue the bishop for damages by reason of a decree which he issued in an administrative capacity, the question must be taken to the competent Roman *Congregation,* not to the Rota (cfr. c. 1601).

(b) Causes of moral persons who have no superior other than the R. Pontiff, e.g., a diocese, an exempt religion (c. 1557, §2; 1599, §2);

(c) Any other questions which the Pope might commit to the Rota for judgment, e.g., those mentioned above as reserved to the Pope personally (c. 1557, §3).

(3) To the Congregations at Rome are reserved the following cases, which however are tried and settled extrajudicially, unless the matter being too involved the Congregation prefers to remand it to the Rota, namely: (1) sacred ordination cases; (2) the marriage cases described in c. 1962.

In addition to the above causes the Pope may reserve others to himself either in the first or second instance, and then that court will try the case which has been delegated by the Pope in each instance; this may be a court even outside of Rome (c. 1557, §3).

Competency of inferior judges with respect to one another— Among the titles which determine the competency of inferior judges or lower courts as described in c. 1560, *sq.* we mention four: (1) domicile or quasi-domicile; (2) location of the thing in dispute; (3) contract; (4) crime.

The judge of the place where the defendant has his domicile or quasi-domicile is competent on the title of forum. The rule is that the plaintiff always follows the forum of the defendant. If the defendant has several domiciles, or a quasi-domicile in addition to his domicile or domiciles, the plaintiff himself may choose among these several courts.

By reason of the location of the controverted thing, action can be brought to the court of the place where the thing is situated, e.g., in trials involving benefices.

By reason of crime the accused may be cited before the court

of the place where the law was violated, e.g., the violation of papal enclosure outside of one's diocese.

By reason of contract suit may be brought to the court of the place where the contract was concluded, e.g., in matrimonial trials.

Where two or more titles of competency occur in the same case it is the right of the plaintiff to choose any competent judge, e.g., in a matrimonial trial he may institute action for a declaration of nullity in the court of the defendant's domicile or in the court of the diocese where the marriage was contracted. If two or more judges arc competent in the same case, that judge who first begins proceedings can lay claim to an additional title *of* competency by reason of prevention, and thereby he excludes all otherwise competent judges.

ART. 111

Lower Courts and Higher Courts
(c. 1569-1607)

The better to secure justice, every legal system provides means by which the proceedings of one court may be reviewed by another court. To this end courts are constituted on a hierarchical basis, i.e., some arc subordinated to others. The court in which the case is first tried is called the court of *first* instance. The court to which appeal is taken for the first time is called the court of *second* instance, or the appellate court. The court to which the sentence is appealed for the second and usually the last time, is called the court of *third* instance, or the supreme court.

§1. Court of First Instance
(c. 1572-1593)

Which court this is—The court of first instance, i.e., the court to which a lawsuit must first be brought by the plaintiff, is the court of the local Ordinary, that Ordinary, namely who has competency by reason of any of the titles just listed above (c. 1572, §1).

Excepted from the rule just stated arc: (1) the causes reserved to the Roman Pontiff or the Roman Tribunals in the first instance, as described above; (2) causes of exempt clerical religions, provided both the plaintiff and defendant belong to the same exempt religion, whether they are individual persons or moral persons, e.g., a religious, or province. Here the judge of the first instance in

centralized religions is the provincial, the judge of the second instance being the general, while the S.C. of Religious gives the final decision if necessary. If, however, the plaintiff and the defendant do not belong to the same exempt clerical religion, the local Ordinary's court is the court of first instance, provided it have some title of competency in respect to other diocesan tribunals as explained above (c. 1579).

Organization of the episcopal court—In every trial at least three persons must take part, otherwise a trial is impossible, namely: a judge, a plaintiff and a defendant. The judge alone constitutes the court, even though he is usually assisted by other officers.

In his own diocese the bishop is the ordinary judge with original jurisdiction. If possible, however, he should appoint a priest permanently to preside at trials in his stead. This priest is called the *officialis,* which term hereafter we shall render by *Official* employing the capital O. Since the Official is to be appointed for all trials, save those which the bishop expressly reserves to himself, he is not the bishop's delegate, but in virtue *of* his office he enjoys ordinary jurisdiction even though this is not original, but only vicarious jurisdiction. However, saving those cases which occur with greater frequency, e.g., marriage cases, the Official in practise will, as a rule, confer with the bishop before presiding at a trial. The Official may be given a substitute with permanent office to act as judge in his place, and this officer is called the Vice-Official. He, too, is appointed by the bishop (c. 1573).

Although the judge alone (the Official, or the Vice-Official) weighs the evidence and renders the decision, he may be assisted by other officers as concerns the gathering of the evidence, the recording of the evidence, the intimating of decrees, etc. The officers who assist the judge are: the auditor, the notary, the promoter of justice, the defender of the bond, the courier and the constable.

After the judge has accepted a case, he may leave all the proceedings, up to and exclusive of the sentence, to the *auditor,* although he may dispense entirely with this officer. It is the duty of the auditor, if appointed, to cite the parties and witnesses, to hear their testimony, to examine documents, and in general to earn- the trial through to its conclusion, saving the rendering of the sentence which is left to the judge. Since the most important work in the average trial is hearing the parties and witnesses, the officer under consideration is rightly called the auditor (from *audire* to hear). The appointment of an auditor secures greater impartiality for the judge who, being absent during the whole course of the proceedings, is immune to those influences which personal contact with the parties

and witnesses is likely to engender. On the other hand, the disadvantage of appointing an auditor lies in the fact that the veracity of those who depose in a trial is partly revealed by such circumstances as facial expressions, hesitancy, etc., points which escape the notice of the judge who does not preside at a trial in person. Yet, it is very convenient, and sometimes necessary, to appoint a delegated auditor to take at least the testimony of a party or witness who lives at a distance from the place of court, or who cannot come to the place of court for seme other reason. A person can be interrogated in a distant diocese through a questionnaire sent to that court (c. 1580-1583; 1770).

While it is optional to employ an auditor, it is not optional but obligatory to appoint a *notary* for every trial. It is the duty of this officer to keep a written record of each and every official act of the trial, and to be present at every session; hence his name, from *notare* to note down. Thus, e.g., the notary records the decree of the judge citing the parties and witnesses, he makes copies of the decrees and has them dispatched through the courier, he notes the fact that the parties and witnesses appeared on such and such a day, at such and such an hour, he records the questions proposed to them by the court, together with the answers of the deponents, etc. The office of the notary is designed to relieve the judge of much work which might distract his attention unduly from other important duties incidental to the trial, e.g., the duty of proposing appropriate questions to the parties and witnesses, observing the details of their conduct in court, their facial expression in the act of deposing, their tone of voice, etc. The court notary is also called the actuary (from *acta*—acts), since he records the acts of the trial. The records signed by the notary constitute public documents, and the law vests them with the authority of full proof concerning the matters contained therein (c. 1585; 1813, §1, n. 3).

'I'he *promoter of justice* may be considered the diocesan attorney. Whenever the public welfare is at stake in *contentious* trials his presence is required, otherwise he need not take part in contentious trials. Thus, e.g., where public rumor considers a certain marriage invalid, and scandal has resulted from the parties cohabiting, and neither party petitions a declaration of the nullity of the marriage from the episcopal court, it is the duty of the promotor of justice to petition the nullity, and to bring forth witnesses and other proofs to substantiate his claims. In *criminal* cases the promoter of justice always participates, it being his exclusive right and duty here to present the formal bill of accusation, to act as plaintiff in the trial, and therefore, to prove to the court that the accused

committed the crime of which he is charged, and is subject to the penalties of the law (c. 1586-1590; 1934).

The *defender of the bond* is an officer who must intervene in marriage and ordination trials. In both cases it is his duty <o produce arguments showing that the marriage or ordination must be upheld as valid. This he does, e.g., by pointing out flaws in the evidence offered by the plaintiff, by calling in witnesses of his own, etc. The office of defender of the bond, like that of the promotor of justice, has been instituted in view of the general welfare. In marriage trials it often happens that both parties take the part of plaintiff insofar as both petition a declaration of the nullity of their marriage, or that one party being already divorced, and remarried unlawfully outside of the Church, is not concerned with the outcome of his trial in the ecclesiastical court. In these cases, there being no defendant, the defender of the bond acts as defendant *ex officio* (c. 1586-1590; 1967-19b9).

It is the duty of the *courier* to intimate the acts of the trial to interested persons, e. g., to carry the summons to the parties and witnesses, to notify the officers of the court concerning the time and place of the next session; to inform the parties at the end of the trial of the sentence rendered by the court, etc. In many cases such acts are intimated through the public mail by means of registered letters, the official notice of receipt being kept in the acts of the trial (c. 1591-1593; 1717-1722).

The duty of the constable, called *apparitor* in the Code, is that of executing judicial orders, especially the sentence of the court. In this country, and wherever separation of Church and State obtains, the office of ecclesiastical constable can be no more than a nominal one, since the civil law forbids private persons to restrain the liberty of its citizens, and in the eyes of the State the Church is but a private corporation, and the ecclesiastical judge merely a private individual. Hence, in practise it must be left to one's conscience to execute the orders and the sentence of the ecclesiastical court upon himself. In certain matters, however, the aid of the secular arm may be invoked to enforce the deliberations of the ecclesiastical court, cfr. p. 19-20 (c. 1591-1593).

Concerning the qualifications of the above officers of the court it may be said that all must be priests, except the courier and constable who preferably should be laymen. Moreover, the Official and Vice-Official ought to be doctors in canon law. or at least well versed in the law, and they should be at least 30 years of age. The same is true of the promoter of justice and the defender of the bond.

AU officers arc appointed by the bishop if the appointment is permanent. The judge in some individual case may appoint for this or that trial. Those officers who are appointed by the bishop may be rtgnoved by him alone, and this for any just cause. The judge may remove for a just cause those officers whom he appointed in some particular case.

Local Ordinary's collegiate court—The court of first instance may be constituted as a court of one judge, or as a collegiate tribunal, depending upon whether only one judge deliberates and renders the sentence, or several judges do this. As to the assisting officers, namely, the notary, auditor, etc., these are the same in number in the collegiate tribunal as in the tribunal of one judge.

The more weighty matters which the Code reserves to the collegiate tribunal are:

1) Trials where the validity of marriage and ordination are at issue, or the rights and temporal goods of the cathedral church arc in dispute; likewise those criminal trials where the penalty to be applied is privation of an irremovable benefice, or excommunication—all these trials are reserved to a collegiate tribunal of *three* judges;

2) Criminal trials in which the penalty of deposition, the perpetual privation of the ecclesiastical garb, or degradation, arc to be applied call for a collegiate tribunal of *five* judges.

In addition to the above questions which *must* be decided by a collegiate tribunal, the local Ordinary is at liberty to commit to collegiate tribunals other questions if he judges this expedient in view of the intricacy, or the importance, of the issue involved (c. 1576).

The collegiate tribunal, whether of three or five judges, is presided over by the Official or the Vice-Official, who together with the other two or four judges constitutes the court. The judges who together with the Official or Vice-Official (c. 1577, §2) form the collegiate tribunal are to be chosen from among the synodal judges, preferably in turn. For this purpose the bishop must appoint certain priests who arc versed in canon law to act as justices when there is need of proceeding by way of a collegiate tribunal. The judges if elected in synod arc called synodal judges; if chosen outside of synod, they are called pro-synodal judges. They should not number more than 12 in the diocese. As to their appointment to office and their removal from office the same rules apply as in the case of synodal examiners and parish priest consultons (cfr., c. 1574).

The collegiate tribunal always proceeds as a body when passing sentence, and the majority vote is decisive (c. 1577, §1). It is not obligatory that the judges preside at every session; the proceedings up to the *conclusio in causa* (cfr. later) may be taken care of by an auditor. It suffices that the judges each examine the written acts of the trial, the evidence submitted, and the written pleadings or defense of the parties, before passing sentence.

Parties to the trial— Every trial, we said, requires at least three persons: the judge, the plaintiff and the defendant. Having spoken briefly of the judge, we now consider the plaintiff and the defendant.

The plaintiff *(actor)* is he who sues, i. c., he who first approaches the judge for a decision and relief. In criminal cases the plaintiff is called the accuser; in extrajudicial processes he is called the petitioner *(orator, oratrix).* The defendant *(reus)* is he who is sued, or he who is hailed into court by the plaintiff. In criminal trials he is called the *accused,* and in extrajudicial processes the party convened *(pars conventa).*

Both the plaintiff as well as the defendant can be individual as well as moral persons, c. g., a religious house, a parish, diocese, hospital, etc.

The following are debarred from acting as plaintiffs in an ecclesiastical trial:

1) Excommunicated persons if they have been excommunicated by sentence of a court, or by decree of the superior. Before such sentence or decree is issued, they may act. But they may always appear to attack the justice of their excommunication. And whenever their soul's welfare is at stake, as e.g., in matrimonial trials, they may be represented by a procurator. In other cases they can act neither personally nor through a procurator (c. 165+).

2) A religious, to act as plaintiff, must have the permission of his superior, unless the religious is bringing the superior himself to trial (c. 1652). Here he needs the permission of the latter's superior.

3) In marriage trials non-Catholics are debarred from acting as plaintiffs, as also those Catholics who were the culpable cause of the nullity of their marriage, cfr. p. 623.

We need hardly add that no restrictions are placed upon one's right to act as defendant, the natural law itself giving everyone the right to defend himself (c. 1646).

As parties to the trial must be considered *procurators* and *lawyers.* The former appear in court in place of the parties them-

selves, and generally do whatever the parties would do, e. g., they take an oath, answer questions, challenge the admissibility of the opponent's witnesses, especially at the lawyer's suggestion. Lawyers, on the other hand, merely assist the parties by their advice based upon expert knowledge and training. After the *conclusio in causa* the lawyer prepares a written defense for his client. One and the same person may act as procurator and lawver in the same trial (c. 1656, §4).

The qualifications for lawyers and procurators (proxies) are that the.v be Catholics, of major age, and in possession of a good name. Whether they arc priests or laymen is immaterial. Moreover, lawyers must have a doctorate in canon law, or at least they must he truly versed in the law. The procurator, provided he have the qualifications just described, may act without authorization of the Ordinary, but he must submit proof of his having been appointed by the partv. But the lawver requires approbation of the Ordinary (c. 1657,1658, §1,2).

No one is bound to appoint for himself a procurator or a lawyer; he may act in person throughout the whole trial and defend his own case. To this rule there are certain exceptions: 1) in a criminal trial the accused must always have a lawyer; 2) in contentious cases of minors, and in all contentious cases where the public welfare is involved, c. g., in matrimonial trials, the parties must have lawyers, these being usually diocesan priests versed in canon law and appointed by the court; 3) a bishop must be represented by a procurator, whether he is plaintiff or defendant in a trial (c. 1655).

§2. Court of Second Instance (c. 1594-1596)

The court of second instance, or the appellate court, is the archbishop's court. This applies if the case was tried in the court of a suffragan bishop in the first instance. But if the trial in the first instance took place in the archbishop's court (for the archbishop being a residential bishop has also his own court of first instance), then the sentence is appealed to that local Ordinary's court which the archbishop, with the approval of the Holy See, has chosen as his permanent court of appeals.

In the second instance the trial is constructed in the same manner as in the court of first instance. Hence, if the case was tried by a court of one judge in the first instance, the appellate court must consist of one judge; if the court of first instance sat

as a collegiate tribunal, the same number of judges must review the case in the second instance.

Usually less time is consumed in the trial held by the court of appeals. Ordinarily it suffices that the acts of the first trial be read over, as also the evidence and the arguments of the lawyers, and that the judge, or judges, deliberate as to whether the sentence of the lower court should be sustained or reversed. Sometimes, however, the court of appeals will find it expedient to cite new witnesses, or to recall witnesses who appeared in the first trial for a hearing, or to order a search for new documents, etc. In that event the parties or their lawyers, will have to draft new written briefs and arguments, so far as new evidence or difficulties harmful to their case may have been submitted.

§3. Court of Third Instance

(c. 1598-1600)

The Roman Rota is the ordinary court of third instance, i. e., the ordinary supreme court, the ordinary court of final appeal in the Church. It is a collegiate tribunal consisting of 10 judges, one *of* whom is the dean. These judges, called auditors, are chosen by the Roman Pontiff, and they must be priests with a doctorate in canon and classical Roman civil law *(juris utriusque ductores,* J. U. D.). They try cases by rotation, three judges sitting at every trial.

The auditors of the Roman Rota arc not auditors in the sense already explained when treating of the auditor in the court of first instance, but they are judges in the strict sense. That they are not called judges but auditors requires historical explanation. In the 12th and the following centuries the Popes found it necessary to employ the services of the so-called *Apostolic auditors* in order to expedite the ever increasing volume of judicial cases being brought to Rome from all parts of Christendom. At first these auditors merely prepared the acts, cited and heard witnesses, and gave their own opinion after careful study, but the final sentence was reserved to the Pope. In the XIII century these auditors had already been empowered to issue the sentence itself, and thenceforth the auditors became judges. Because the auditors either sat in a circular room, or at a round table, or judged cases by rotation, the tribunal in time came to be called the *Rota* (wheel).

In addition to being the ordinary supreme tribunal, i. e., the tribunal *of* third instance in the Church, the Roman Rota may act also in the second and first instance. In the second instance it

judges cases which have been tried in the diocesan court in the first instance but which were not appealed to the archbishop's court, c. g., the appealing party preferred to go directly to the Rota which right he always has by law.

§4. The Signatura Apostolic (c. 1602-1605)

This is a Roman tribunal having at present 8 cardinals who act as judges. For the most part it examines complaints against the members of the Rota, e. g., if a party to the trial challenges the impartiality of a judge. It derives its origin from the college of prelates in the Middle Ages, who were called *referendarii,* and whose right it was to *refer* to the Pope petitions from private individuals. If the Pope granted the favor, he manifested this by placing his *signature* on the document, which being given by the Pope was called in Latin *Signatura /lpostolica.* The Apostolic Signatura as a college of prelates was later divided into two sections, one referring to the Pope petitions for rescripts of favor, the other petitions for rescripts *of* justice. This latter section in time became vested with judicial power, after the prelates for a long time had been mere auditors in the sense of simply preparing the acts and evidence for the Pope's final decision.

§5. Delegated Courts

In some exceptional case the Roman Pontiff may find it expedient to appoint a special tribunal for judging a question which otherwise would belong to the local Ordinary. So also as to causes reserved to himself personally, the Pope may commit these to the Rota or the Signatura Apostolic or to a specially appointed tribunal. In all these cases we have a delegated court.

In the same way the local Ordinary may commit judgment of a case for special reasons to a priest other than the Official or the Vice-Official.

The judge delegated by the Holy See is at liberty' to choose the regularly constituted diocesan court officers to assist him, or to select his own, unless the rescript of delegation reads otherwise.

The judge delegated by the bishop is bound to use the services of the regular diocesan court officers, i.e., the diocesan notary, defender of the bond, etc.

Whether from the delegated judge appeal should be taken to the superior who delegated him. as was the principle under the

prc-Code law, is now disputed. VVernz-Vidal VI, 128 would permit appeal to the *delegans;* Roberti, I, 148 believes that appeal should be taken to the next higher court.

ART. IV

Introductory Stage of the Trial

The introductory stage of a trial comprises: 1) the presentation of the bill of complaint to the court; 2) the examination, admission or rejection of the same by the court; 3) the summoning of the defendant; 4) the joining of the issues.

§1. The Bii.i. of Complaint

A trial opens when the plaintiff submits to the court his bill of complaint *{supplex libellus),* called also a petition (c. 1706). Sometimes, however, the judge initiates the trial. This happens in criminal trials, and in those matrimonial and ordination trials where the public welfare is at stake (c. 1618). Here the promoter of justice acts as plaintiff and drafts the bill of complaint.

The bill of complaint mentions the name of the court being invoked, the object of the petition, the name and address of the defendant; and gives a general outline of the arguments in law and fact upon which the plaintiff bases his contention (c. 1708). It is signed by the plaintiff. Usually in matrimonial trials the pastor drafts the petition for the plaintiff somewhat in the manner of the following specimen:

To the Honorable Matrimonial Court of the Diocese of . . .

Mary Brown, a Catholic, and at present a member of my parish, residing **at**..... was united in marriage to John Smith, also a Catholic, now residing **at**..... by the Rev.....at .....(city, State), **on**..... (date).

This marriage having proved unhappy for both parties, a civil divorce was obtained from .... (court), **at**.....(city, State), on . . . . .(full date).

Mary Brown, the plaintiff, now contends that her marriage with John Smith was invalid from the beginning due to lack of consent on her part arising from reverential fear. In support of such claim she offers the following proofs or facts:

1.....

2..... etc

In view *of* canon 1087, §1 of the Code of Canon Law which declares invalid a marriage contracted through grave fear or force, the plaintiff humbly prays the court to examine her case, and if the facts so warrant, to declare her free from the bonds of her marriage with John Smith.

Herewith included are the baptismal certificate of the plaintiff, a copy of the aforesaid marriage record, a copy of the divorce decree, and the names and addresses of witnesses whom the plaintiff intends to produce at the trial.

The undersigned declares the above to be true, and humbly begs the court to grant her the benefit of a trial.

(Signed) Mary Brown.

Subscribed and sworn to before me this ---- day of --- . 19 ---- at --- .

(Signed) Rev.....
(Seal).

The bill of complaint may be presented to the chancellor, or the Official or Vice-Official, either personally or through the mail.

§2. Examination, Admission or Rejection of the Petition

After receiving the bill of complaint, the judge will examine it with a view to its admission or rejection. Should it be necessary for the court to reject the petition because of its faulty drafting, the plaintiff should be notified of the fact, and given an opportunity to resubmit the petition in corrected form. Should the petition be rejected for any other reason, c. g., because the court believes the petition lacks sufficient basis in law or in fact, and that the petitioner has no case, the plaintiff has the right to take recourse within ten days to the court of second instance requesting that the justice of the rejection be examined (c. 1709). If within a month from its presentation the court of first instance fails to inform the plaintiff concerning the admission or rejection of the petition, the plaintiff has the right to remind the court of the petition, and if five days thereafter the court still remains silent, the plaintiff mav take the matter up with the bishop (c. 1710).

When examining the bill of complaint, the court will first ascertain whether or not it has competency in the case, e. g., whether the defendant is domiciled or quasi-domiciled in its territory, or

whether some other title justifies competency, e. g., because the marriage was contracted in the territory, etc. The judge himself decides his own competency. Against the decree of the judge declaring himself incompetent, the plaintiff may take recourse within ten days to the court of second instance for a settlement of this point (c. 1609, §1; 1610, §3).

Once the court admits the bill, it may be found advisable to hold a preliminary meeting, prior to citing the defendant, for the purpose of securing additional information from the plaintiff which is not found in the bill of complaint. This informal interview with the petitioner may be imperative even to ascertain whether the petition is admissible.

§3. Citation of the Defendant

.After the admission of the petition, the next step is for the court to summon the defendant. The summons must mention the name of the court, the object of the suit, the name of the plaintiff, and the time and place of the session for the joining of the issues (c. 1711-1715). Whenever one or both parties appear spontaneously in court, the citation is unnecessary, and it suffices for the notary to make mention in the acts of the spontaneous appearance (c. 1711). Oral summons by phone, though valid, should be the exception.

The summons may be served by the court's courier (priest or layman), or it may be sent by registered letter with a request from the post office for a receipt of its delivery signed by the addressee. If the whereabouts of the defendant arc unknown, the citation may be made by public edict, i. c., by posting a copy thereof to the doors of the chancery office, or by an insertion of the citation in some public journal or newspaper which is likely to come into the hands of the defendant, his relatives or acquaintances. But public policy may sometimes advise against the use *of* either of these methods. In that supposition the defender of the bond takes the place of the defendant in matrimonial and ordination cases, the lawyer appointed by the court takes his place in criminal cases. In civil cases it is unlikely that the defendant will fail to put in a personal appearance, his financial interests here being at stake (c. 1717, 1719, 1720).

§4. Joining of the Issues

(c. 1726-1731)

'I'he second session is that which is called for the joining of the issues, the first having determined the admissibility of the bill.

At this time it may be remarked that court may be held on all days of the year, saving holydays of obligation and the last three days *of* Holy Week; likewise at any hour, though preferably during the day. The sessions may be held in any place of the diocese subject to the bishop's jurisdiction, even in the residences of the judges, e. g., the parish house of the parish where one of the judges is pastor, but as a rule it should be set up in the episcopal residence or the chancery office (c. 1636-1639).

'Fhc joining of the issues is merely the affirmation or affirmations made by one party and their denial by the other party with a view to litigation. The purpose of this formality is to get down to the bone of contention, i. c., to ascertain just what is being controverted, for obviously those points upon which the parties agree must be eliminated from the controversy during the course of the trial, as they require no proof other than the confession of the party.

Simultaneous presence of both parties in the room is permitted, and is usually verified in civil cases. But in matrimonial trials it often happens that the parties to the contested marriage arc now civilly divorced and have no desire to confront each other. In such case the defendant is heard after the plaintiff, and on a different day to enable him, if he wishes, to deny the assertions of the plaintiff, unless the defender of the bond represents him.

In matrimonial and ordination trials the joining of the issue» is usually a very simple matter, and is often worded thus: *An constet de nullitate matrimonii (ordinationis) in casu/* In criminal trials the joining of the issues consists of the charges (counts) made by the promoter of justice and admitted or denied by the accused. In civil trials the claims of the plaintiff and their admission or denial by the defendant arc more involved, as a rule, so that the joining of the issues in such trials is a very important feature of the proceedings.

The session under consideration opens by having the plaintiff take an oath to speak the truth, saving criminal trials in which the accused is never put under oath. The petition of the plaintiff is then read, and the plaintiff is asked if he has anything to change, subtract, or add. Thereupon he is questioned further upon points which the bill of complaint may not have developed sufficiently, 'i'he defendant is heard next.

It must be noted that in ecclesiastical trials, questions are placed directly to the parties and witnesses *only by the judge* (c. 1742, 1743, 1745), and in a collegiate tribunal by the presiding judge alone. In trials which involve purely private interests, e.g., most civil trials, only the plaintiff and the defendant suggest written

questions, either personally or through their lawyers, to be proposed by the judge to the other party or the witnesses. But in trials which concern the public welfare, i.e., marriage, ordination and criminal trials, the judge may propose questions of his own *(ex officio)* in addition to those offered by the parties the promoter of justice or the defender of the bond (c. 1742, 1745). When the adverse party, the defender of the bond in marriage and ordination niais, and the promoter of justice in criminal (and sometimes in marriage and ordination) trials wishes to interrogate the other party, he must submit the question or questions in writing to the judge. In matrimonial trials the *duty* of framing questionnaires to be answered by the plaintiff and defendant and witnesses rests upon the defender of the bond. This is not merely a right.

After the issues have been joined, i. e., after the parties have been questioned sufficiently by the judge, and have answered, and cleared up what they disagreed upon, the introductory stage of the trial ends, and the probative stage of the trial begins. The sessions to follow will be concerned with the production and examination of witnesses and other forms of evidence. To this end, before they leave the first session, the parties ought to submit to the court the names and addresses of their witnesses, and all documents relevant in the case, if they have not done so up to now.

ART. V

Probative Stage of the Trial

The probative stage of a trial includes all those sessions which are called for the purpose of proving or disproving the claims and assertions of either party.

The Code recognizes seven forms of proof: 1) the confession of the parties; 2) the testimony of witnesses; 3) the testimony of experts; 4) judicial inspection; 5) documents; 6) presumptions; 7) oaths.

§1. Confession of the Parties (c. 1750-1753)

A confession is a statement made by one party against himself and in favor of his adversary. It is a judicial confession when made in open court; otherwise it is an extra-judicial confession, e.g.,

letters written by the parties to each other during their days of courtship, statements made to relatives and friends of the family, etc. Judicial statements or admissions will abound in the first session incidental to the joining of the issues, but they may also occur during any subsequent session of the trial.

A judicial confession carries with it the weight of full proof in trials where only private interests arc involved, c. g., civil trials. But in trials where the public welfare is at stake, e. g., in matrimonial and ordination trials, a judicial confession has only the value of partial proof *(semiplena probatio)*› i.e., a proof which begets probability but not certainty. Thus, e. g., in a matrimonial trial the statement of the parties made in court to the effect that they had placed a pre-nuptial condition contrary to the substance of marriage would not entirely satisfy the court, but corroborative evidence would have to be furnished through witnesses, documents, or circumstances preceding, accompanying and following the marriage which might create in the mind of the judge a presumption to that effect.

An extrajudicial confession has only the force of incomplete proof. It is left to the court to determine in any given case the probative value of such confession. Thus, in matrimonial trials, statements made by the parties orally or in writing, e. g., by means of correspondence, provided these statements affect the case, and were made at an unsuspect time, carry great weight, e.g., if prior to their marriage they had repeatedly stated that they would resort to civil divorce in the event that they tired of the union and wished to contract a new marriage.

§2. Witnesses

In the average trial the chief source of proof is the testimony of witnesses. In trials where the common welfare is at stake, e.g., in matrimonial trials, witnesses may be produced not only by the parties but also *ex officio* by the court. In purely private litigations it is the parties alone, to the exclusion of the court, who offer witnesses (c. 1759).

Persons disqualified from acting as witnesses—These fall into three categories: (1) unfit witnesses; (2) suspect witnesses; (3) incompetent witnesses.

To the class of *unfit* witnesses belong: (1) weak-minded persons; (2) persons who have not attained the age of puberty (c. 1757, §1).

To the class of *suspect* witnesses belong: (1) those who have been sentenced for perjury; (2) those who are unworthy of belief

by reason of their scandalous lives; (3) public and-grave enemies of the party (c. 1757, §2).

To the class of *incompetent* witnesses belong: (1) the parties to the trial, or their representatives, i.e., procurators, guardians, etc.; (2) the officers of the court; (3) priests with reference to information gained through sacramental confession; (4) a married person with respect to his or her spouse; (5) blood and law relatives of the partv in all the degrees of the direct line, and in the first degree of the collateral line, but these may testify in matrimonial trials (c. 1757, $3).

Examination of the witnesses— Having been duly summoned, and having appeared in court, the witnesses before answering the questions proposed by the judge must first take an oath to speak the truth, unless purely private interests are at stake and both parties agree that the witnesses be heard unsworn. Likewise, unfit and suspect witnesses if admitted ought to be heard unsworn. Witnesses may be put under oath to observe secrecy concerning the questions proposed to them, and the answers they gave, until the acts of the trial arc published (c. 1767-1769).

General questions precede particular ones. Thus, the witness is first questioned concerning his name, residence, religion, occupation, age, connection with the party for whom he is testifying, i.e., whether hr is a relative, intimate friend, mere associate, etc. The answers to these general questions help the judge to appraise the value of the witness's testimony. Then follow the particular questions bearing specifically on the controversy at issue, e.g., in matrimonial trials: whether it is true that the parties made such and such statements prior to their marriage: did the groom give presents to the bride; did the parties show signs of joy on the wedding day; did the one leave the other on the wedding day itself; was the wedding followed shortly afterwards by quarrels, etc. Finally, the witness must always be questioned concerning the source of his knowledge, i.e., whether it is first-hand knowledge, or only hearsay knowledge (c. 1774).

Witnesses must testify in the place of court. Excepted from this rule are: (1) persons of distinction *(personae in dignitate constitutae);* (2) those who arc prevented from appearing in court by reason of some physical impediment, e.g., illness; (3) those who live at a great distance from the court. In such cases the judge cither goes to these persons, or he delegates a priest to go to them and receive their testimony. Such a priest, even though of a distant diocese, may be called a delegated *auditor ad actum* (c. 1770).

Witnesses are questioned only by the judge, not by the parties, nor by the defender of the bond, the promoter of justice or the parties' lawyers. However, all these are permitted to, and the defender of the bond and the promoter of justice *must* formulate questions, articles or points, upon which the witnesses may be questioned by the judge (c. 1773).

Obligation to testify—Witnesses who are lawfully summoned must appear and testify, or at least explain (orally, or by letter) why they cannot appear. Against the contumacy of a witness to testify, the court may employ suitable spiritual penalties, though this is not always advisable, especially in the case of the laitv (c. 1766).

Excused from the obligation of testifying are: (1) priests in reference to extra-sacramental, i.e., professional secrets, for with reference to sacramental secrets they arc absolutely incompetent as wc saw; (2) civil officials, midwives, physicians, lawyers, notarie- and all other persons who arc held by law to professional secrecy, and provided the questions which are proposed relate to such secrets; (3) those who have just reason to fear that grave harm will result to themselves, or to their near kin, if they appear as witnesses (c. 1775).

Appraisal of testimonial evidence—The testimony of *two* concordant sworn trustworthy witnesses furnishes full proof, i.e., proof sufficient to create in the mind of the judge moral certainty (c. 1791, $2). Even one witness suffices to furnish this proof if he is a qualified witness, i.e., a person who testifies to matters falling within the range of his official duties, e.g., the findings of a handwriting expert, the conclusions of a physician, etc. (c. 1791, §1).

The testimony of two witnesses suffices when they testify to the *same* fact. This need not be the main fact at issue, e.g., whether the bride contracted marriage under the influence of reverentia' fear. Usually the fact is only one of a chain leading up to the main fact at issue, e.g., whether on a certain day the father locked the girl in her room as alleged, whether he struck her blows, whether he threatened to disinherit her unless she married the man of his choice, whether on the wedding day the bride appeared sad, etc.

In appraising the value *of* testimonial evidence the judge must apply not only the numerical criterion (two concordant witnesses), but also the moral, mental and material criterion, as explained in c. 1789. The *moral* criterion is intended to discover the trustworthiness of the witness, and to this end the judge will consider the personal character of the witness, e.g., whether he enjoys a good

reputation, whether he has religious beliefs, etc. The *mental* criterion serves to learn the reliability of the witness. To this end the judge will inquire into the source of the witness's knowledge, i.e., whether he testifies *ex scientia propria,* e.g., did he actually see the father strike his daughter, or lock her in her room, etc.; or whether he testifies rx *credibilitate,* i.e., whether his statements merely reflect his opinion; or whether his testimony is *de fama,* i.e., knowledge gained from rumor; or, finally, whether it is merely *de audito alieno,* i.e., hearsay knowledge. In applying the *material* criterion the judge will consider the manner in which the witness deposed, e.g., whether he was hesitant, contradictory, hasty, evasive, etc.

The challenging of witnesses—The party against whom a witness testifies has the right to challenge his testimony. If the person of the witness is to be challenged, e.g., because the law excluded him from testifying, this objection must be entered within three days after the interested party is notified of the name of the witness (c. 1764, §4). If the testimony itself is challenged, e.g., because of contradictions, falsehoods, obscurity in the making of statements, etc., this can be done at any time prior to the rendering of the final sentence (c. 1783). It should be noted here that the names of witnesses who testify against him need not be communicated to a partv until the probative stage of the trial comes to an end (c. 1763).

§3. Experts

(c. 1792-1805)

The testimony of experts is sometimes *required* by the law; at other times it is left to the judge whether or not to employ them. The law, e.g., requires the presence of physicians and mid-wives in impotency and *ratum et non-consummatum* cases. Where insanity is alleged to have invalidated a marriage, an alienist will be called in. Where the authorship of a document is disputed, a handwriting expert will be questioned, etc.

In addition to possessing the qualifications required of ordinary witnesses, experts must furnish an authentic certificate of competency. They may be challenged by cither party to the trial for the same reasons as ordinary witnesses may be challenged.

An expert must make a detailed written report of his findings and present it to the court, stating his opinion and the reasons which have led him to form such opinion in the case. Not only the competency but also the trustworthiness of the experts, as well as all

other circumstances we mentioned in the case of ordinary witnesses, must be taken into consideration by the judge when appraising the value of their statements.

§4. Judicial Inspection

At times the judge will find it necessary or convenient to personally inspect the material object of the controversy. This may be done by having the thing in dispute brought to the court, or if this is not possible, the judge himself or his delegate may go to the place and perform a local inspection. Thus, local inspection is often decreed to ascertain the amount of damages, or whether (in criminal trials) the enclosure of a monastery has been violated, or a cemetery has been profaned, etc. (c. 1806-1811).

§5. Documents

To ascertain the value of documentary evidence in ecclesiastical trials one must distinguish between public and private documents.

The principal public documents in the Church are: (1) the acts of the Roman Pontiff, of the Roman Curia, and of Ordinaries, which the}' have drawn up in the discharge of their official duties; (2) the records of an ecclesiastical court; (3) the entries of baptism, confirmation, ordination, religious profession, marriage and death as found in the registers of the diocesan Curia or the parish; (4) authentic copies of all the above; (5) documents drafted by public notaries. The ecclesiastical court will also consider as public documents those which the civil law of the place regards as public *civil* documents. Private documents, on the .other hand, are letters, contracts, last wills and other instruments which have been written by private individuals, or by public officials, but in the capacity of private individuals (c. 1813).

Concerning the probative value of documents, canon law regards every *public* document as complete proof of the statements which the document directly and principally contains. Thus, e.g., a baptismal certificate issued in authentic form, i.e., with the signature of the priest who issues it, the seal of the parish, and the annotation of date of issuance, is full proof of the fact that baptism was conferred. But should the baptismal register contain a marginal note asserting illegitimacy, on such point the register, or the authentic extract, will not be considered full proof, because baptismal inscriptions are made directly and primarily as records of baptism, not of other facts. Private documents, on the other hand, have only the probative value of an extrajudicial confession so that it belongs

to the judge to appraise their value in each individual case (c. 1814-1817).

Just as a witness may be challenged so too may a document be. The interested party who feels his cause adversely affected by a document may always object to the same. The judge may challenge a document only in trials where the public intcre-t and welfare are at stake. A document may be challenged for various reasons, e.g., as *not authentic,* i.e., not written by the reputed author; as *not* entire because of abrasions, interpolations, etc.; as *invalid* because not vested with the formalities required by the law in the case of public documents; as *false* because of contradictory statements contained therein, etc. When exception is taken to a document the matter is reviewed by the court as an incidental question, and settled by the so-called interlocutory sentence (c. 1815, 1818).

§6. Presumptions (c. 1825-1828)

A presumption is the probable conjecture of an uncertain fact. If the law itself conjectures the fact we have a presumption established by law *(praesumptio juris)*; if the judge conjectures the fact we have what the Code calls a *praesumptio hominis.* Legal presumptions arc called *praesumptiones juris simpliciter* if it is allowed to overthrow them by *direct* proof to the contrary; whereas *praesumptiones juris et de jure* are those presumptions which cannot be challenged save only by *indirect* proof. Most legal presumptions are *praesumptiones juris simpliciter,* e.g., a person under the age of seven is presumed to lack the use of reason (c. 88); baptism once conferred, and a marriage once contracted, are presumed valid (c. 1070; c. 1014); a woman's husband is presumed to be her child's father (c. 1115), etc. Direct proof against a presumption is that which attempts to prove the presumption itself unreasonable in the present case while admitting as true the fact upon which the presumption itself is based, e.g., by proving that the woman's husband was absent from home for ten consecutive months prior to her child's birth. Indirect proof is that which denies the fact upon which the presumption is founded, e.g., if it can be proved that the man is not the woman's husband. *Praesumptiones juris et de jure* are less numerous, nor are canonists agreed as to which presumptions contained in the Code really belong to this category. It is certain, however, that the presumption established in c. 1904. to the effect that a matter which has become irrevocably adjudged by the court is a true and just decision, belongs to that class.

Praesumptiones hominis, as was said, are those which the judge himself forms in the course of the trial. They are frequently resorted to in matrimonial trials where the validity of a marriage is contested on the grounds of defective consent. Since no man can read another's mind, the absence of consent can at the most be only conjectured. Thus, the circumstances preceding, accompanying and following the wedding will be considered by the court. If, e.g., the plaintiff can prove that prior to his marriage he repeatedly had stated that he was opposed to the union; if on the wedding day itself he showed no signs of joy; if immediately following the wedding he deserted his spouse, etc., circumstances such as these will go far to create in the mind of the judge a presumption that true marital consent was withheld from the very beginning as alleged.

As to the probative value of presumptions we must distinguish between legal presumptions and judicial, or human, presumptions. A legal presumption relieves the party whom it favors of all burden of proof. Thus, the party who asserts his marriage to have been invalid must prove his claim, since the law presumes that every marriage which is contracted in legal form is valid. Here the presumption of law is in favor of the defendant. The presumptions of the court, on the other hand, are not in themselves conclusive proof but only supplementary proof, which, when added to other evidence submitted in the course of the trial, suffice to justify a decision of the court, supposing the evidence in itself was insufficient to create moral certainty in the mind of the judge.

§7. Oaths

The oaths of which the Code speaks here are not to be confused with the oath of which we have already spoken, namely, the assertory oath to tell the truth which is administered to the parties and witnesses before they testify in court (cfr. p. 594,597). The oaths under present consideration arc proofs in themselves, sometimes partial proofs, sometimes conclusive proofs. They are three: (1) the supplementary oath; (2) the estimator}' oath; (3) the decisive oath.

In order to pass sentence there must be sufficient evidence present to create in the mind of the judge moral certainty concerning the issue to be settled, otherwise the case is dismissed in favor of the defendant. However, the judge may depart from this rule, and either upon his own initiative, or at the request of either party, administer the so-called *supplementary* oath to settle the contro-

vcrsy. The party who then takes the oath to the effect that he thinks the case ought to he decided in his favor, wins the case. It is understood that no party can at his own request take this oath, but only at the request of his adversary, or at the instance of the court (c. 1829-1831).

In a suit to recover damages the judge may administer the estimator)· oath to the defendant in order to determine the amount of the damages incurred (c. 1832-1833).

With the intervention of the judge one party may in the course of the trial propose that the other take an oath expressive of his opinion concerning the controverted issue. Such an oath terminates the controversy in favor of the party who takes it. It amounts to a sentence, and is therefore called the *decisive* oath. It differs from the supplementary oath in this that the decisive oath is always voluntary while the supplementary oath is obligatory, being imposed by the court (c. 1834-1836). Others never decide marriage cases.

ART. VI

Final Stage of the Trial

The final stage of a trial comprises: (1) the publication of the acts; (2) the pleadings; (3) the sentence of the court; (4) appeals and other forms of redress against the sentence; (5) the execution of the sentence.

§1. Publication of the Acts

Unlike civil trials, ecclesiastical trials are conducted in comparative secrecy. Saving civil cases, the parties seldom confront their own witnesses, or those of the adversary. Even the witnesses arc heard one at a time, and arc often put under an oath of secrecy not to reveal the questions proposed, or the answers given, until the close of the trial.

To insure justice under this system of secrecy, the notary has the duty of recording each and every official act of the trial, and preserving the documents and other proofs which have been submitted. Since neither party has any definite knowledge of how the witnesses testified for or against him, or what documents and other proofs were submitted to weaken his case, etc., in order that he may be given an opportunity to argue or plead his case before sentence is passed, all the acts of the trial must eventually be published. This is effected by a decree of the judge ordering that

the acts be published or that copies thereof be given to the parties, and to the promoter of justice and the defender of the bond if these took part in the trial. In the same decree the judge usually fixes a term within which the parties, after examining the acts, may produce new witnesses, or may challenge the admissibility of adverse proofs which have been submitted. L'pon the expiration of thr term the judge issues a decree stating that the probative period of the trial is closed. This statement is called the *conclusio in causa* (c. 1858-1862).

§2. The Pleadings

(c. 1862-1867)

The official closing of the case is followed by the pleadings of the parties, i.e., the defense and discussion of their case. In ecclesiastical trials there is no public arguing of one's case in open court. The defense is prepared entirely in writing. The parties are usually assisted by their lawyers in this respect, especially in matrimonial trials where the laity arc not acquainted with the intricacies of canon law, but require the assistance of ecclesiastical lawyers.

In preparing a defense for his client the lawyer will first state his case *in jure,* i.e., he will point out the various canons of the Code, the opinions of eminent canonists, and (if any) the decisions *of* the Rota relevant to the subject at issue. Next he will discuss the facts of the case, i.e., he will argue the case *in facto,* showing how the various facts adduced by his client are true and bear upon the case, that the statements of the adversary or his witnesses are false, contradictory, irrelevant, etc. He will then draw up his conclusions favorable to his client.

The judge has the right to limit the defense lest it become too extensive. In matrimonial trials the defense ought not to exceed 20 printed pages as a rule.

In matrimonial and ordination trials the defender of the bond prepares his own written defense. In criminal trials wherein he takes part, the promoter of justice must plead his side of the case in writing.

The judge may fix the term within which the defenses must be prepared. In time each party communicates to the other through the agency of the court a copy of his prepared defense. Then, after careful study, each party has the right to submit to the court a written rejoinder to the written defense of his adversary. In matrimonial trials this rejoinder ought not to exceed 10 pages as a rule.

Only by way of exception is the party or his lawyer (also the defender of the bond and the promoter of justice) allowed to discuss orally certain points in open court, points which cannot be easily clarified on paper. But this discussion should be as brief as possible, and no oratorical display is allowed.

§3. The Sentence

(c. 1868-1877)

Before passing sentence the judge (or judges in a collegiate tribunal) must have been present at the various sessions, or if an auditor conducted the trial, it will at least be necessary for the judge or judges to examine the acts of the trial and the written defenses and rejoinders of the parties, and of the promoter of justice, or the defender of the bond, if these officials participated in the trial. In evaluating the evidence and the pleadings, much is left to the conscience and judgment of the court, unless the law has its own ruling concerning the probative value of this or that form of proof.

In a tribunal of one judge, he alone formulates the written sentence. In a collegiate tribunal, each judge writes out his opinion, having studied the law and the facts of the case from copies of the acts of the trial, of the written defenses of the parties and their rejoinders. Six or seven copies of all the acts are sometimes ordered made by the court in marriage trials. On the day appointed by the presiding judge these associate judges convene with him, and in turn each reads his written opinion. The majority opinion prevails, although oral discussion is permitted among them, and in the course of this a judge is allowed to change his written views The sentence, when no further discussion is offered, is formulated by the judge who in the beginning of the trial was appointed the *ponens,* and it should contain the reasons both in law and in fact for the decision. The Official or presiding judge from the very start of the trial appoints the *ponens;* he can appoint himself the *ponens.* The ponens at his leisure uses the material of the majority opinion in formulating the sentence which at a later date is signed by all the judges. The sentence may be published in three ways: (1) by citing the parties to the court room and reading the sentence to them : (2) by informing the parties that they may have access to the original draft of the sentence contained in the records of the court, and may come and read the sentence for themselves: (3) by mailing them a copy of the sentence.

The sentence should also determine the judicial expenses. As a rule the costs ought to be borne by the loser in the trial, but

in practise the costs are distributed equally between both parties, especially when both a'cted as plaintiffs in a marriage trial. The poor should be given gratuitous service, unless they are not entirely destitute, in which case they may be asked to give what they can.

In ecclesiastical trials the judge pronounces both on the law and the facts. There is no jury of laymen to pronounce on the facts. The jury idea in civil law supposes that sovereignty resides in the people and that they arc competent to judge concerning facts. In church trials the laity, while not considered incompetent to judge the facts, are simply devoid of sovereign jurisdiction, all authority by divine law in matters sacred having been conferred by Christ upon the Pope and the bishops as successors of the Apostles. The Church has not seen fit to share this authority with the laity so far as trials arc concerned, but their judicial authority the Pope and bishops share only with the clergy.

§4. Redress Against the Court Sentence

Canon law recognizes especially three remedies or escapes from a possible unjust sentence of the court: (I) appeal; (2) complaint of nullity; (3) reinstatement.

A. Appeal

(c. 1879-1891)

Against a sentence which be believes to have been unjust, because the court misinterpreted the law, or misjudged the facts of the case, or the proofs, the aggrieved party may appeal to the court of next higher instance.

But no appeal lies:

(1) From the sentence of the Roman Pontiff or the Apostolic Signatura;

(2) From a sentence which has become irrevocably adjudged, although in this case reinstatement is possible, as we shall sec;

(3) From a sentence *of* the judge who has been delegated by the Roman Pontiff with the clause: *appellatione remota;*

(4) From an invalid sentence, since in this case the aggrieved party rather makes a motion for a new trial, as we shall sec;

(5) From a sentence which was based upon a decisive oath.

For other instances in which the law denies appeal, cfr. c. 1880.

Where only private interests are involved, there is no need for the aggrieved party to appeal, as is obvious; no one is required

to exercise this privilege. But in matrimonial and ordination trials, if the court decided that the marriage or the ordination was invalid, the defender of the bond *must* appeal the decision.'

When appeal is taken it must be presented to the court which passed the sentence. The court will forward the original or copied acts of the trial to the court of appeals within 30 days after receiving notice that the right of appeal is being requested and invoked. The party must file his appeal within ten days after receiving notice of the unfavorable sentence. *Tempus utile* is contemplated here, which does not transpire for one who is ignorant of his right, or cannot exercise it. If the ten days are culpably allowed to transpire, the aggrieved party loses his right to appeal, the case becomes irrevocably adjudged, the sentence can then be executed, and the only redress permitted thereafter is in the form of reinstatement.

The appellant may not change his title in law when prosecuting the case in the court of appeals, c.g., to contest his marriage on the grounds of impotcncy if in the first instance he had pleaded defective consent.

Every appeal is granted *in suspensive»* saving appeals from censures (c. 1889, 2243). In some cases the judge may grant provisional execution to the sentence for very grave reasons and safeguarding the right of the party to be indemnified if the court of appeals reverses the sentence, c.g., in a criminal trial where the accused was sentenced and deprived of his benefice (c. 1917, §2. n. 2).

B. Complaint of Nullity

One cannot appeal from an *invalid* sentence for the simple reason that the sentence is considered non-existent. It cannot, like a valid sentence of the lower court, be reversed or confirmed, for it does not exist. In such a case the law allows redress which consists in a motion for a new trial *{quaerela nullitaiis),* cfr. c. 1892.

The sentence of the court may have been void for various reasons, c.g., the court lacked jurisdiction, or an essential formality was neglected such as the citation of the defendant.

Canons 1893, 1895 allow a grace of ten days or thirty days to enter a motion for a new trial depending on the nature of the error.

The motion for a new trial must be presented to the court which pronounced the invalid sentence, but the party who is interested may ask for a substitution of judges.

The sentence of the new trial, if valid, can be appealed.

C. Reinstatement

(c. 1902-1907)

If a sentence has become irrevocably adjudged *(res judicata),* the law prohibits appeal. Canon 1880 lists the cases where one cannot appeal from a sentence, and these cases arc repeated in c. 1902, e.g., if one did not avail himself of the right to appeal within the time permitted, or it may be that the higher court has confirmed the sentence of the lower court, etc. But suppose wew *facts* are discovered later on which show the sentence to have been evidently unjust. In this case the aggrieved party, while he cannot put in an appeal, nor the motion for a new trial based upon the supposition of an invalid sentence, may ask for a reinstatement *(restitutio in integrum).* The law will then place him in the same condition in which he found himself originali)' at the start of the trial, i.c., he is allowed a new trial, governed not by the principles *of* the *quaerela nullitatis,* but by the principles of law covering the *restitutio in integrum* as follows:

Reinstatement is not granted save within these limits:

(1) It must be petitioned within four years from the moment it could apply;

(2) The original sentence must have been evidently unjust cither: (a) because it was based on false documents offered in the trial; or (b) new documents were discovered later on which revealed new and relevant facts sufficient to warrant a contrary decision; or (c) the sentence was the effect of fraud perpetrated by the adversary, e.g., he bribed witnesses; or (d) some precept of the law was grossly ignored. Commentators are not agreed as to the meaning of this last condition.

As a general rule, reinstatement should be requested of the court which passed the sentence in the first instance. Should the favor be granted, a new trial will be begun, and from the sentence rendered in this trial a new appeal is admitted. Should the favor be denied, the petition for reinstatement may be taken to the court of appeals.

§5. Execution of the Sentence

(c. 1917-1924)

A sentence cannot be put into execution until it has become irrevocably adjudged in the sense explained above. It is the right of the court of the first instance to execute the sentence even though it was appealed and confirmed by a higher court. The judge does

not execute the sentence, but this is left to the superior with executive (administrative) jurisdiction, e.g., the bishop.

Against those who refuse to obey the sentence of the court the Ordinary shall first proceed by way of warnings and precepts, later resorting to censures if need be. Sometimes the civil courts may he invoked to execute the sentence of the ecclesiastical court, (cfr. p. 19-20).

Chapter II

CIVIL TRIALS IN PARTICULAR

Civil ecclesiastical trials belong to that class of contentious trials which have for their object the prosecution or the vindication of property rights. In particular, a civil ecclesiastical trial is one in which the plaintiff brings suit against a cleric, religious or novice, or against a moral ecclesiastical person in some matter involving rights to temporal goods, i.e., in which he sues for the retention, acquisition, or recovery of the title of possession or ownership to temporal goods, the payment of debts, or compensation for damages suffered, or questions a cleric's title to a benefice.

The Code docs not employ the term *civil* trials, but refers to the trials under consideration as *contentious trials in which only private interests are at issue.* The term *civil* trials has been dropped probably to avoid confusing these trials with non-criminal trials conducted in the secular courts of the State. The term, however, was commonly employed by pre-Code canonists in the sense explained in the preceding paragraph, and if we resume its use here, it is simply a matter of our own choice to substitute for the more lengthy terminology of the Code.

Civil trials in the Church arc conducted in accordance with the general rules of procedure contained in Part I of Book IV of the Code, a summary of which we have described in the preceding chapter. At this place it suffices to point out a few characteristics proper only to civil trials, characteristics which are not usually verified in the case of criminal, marriage or ordination trials.

It is peculiar of civil trials that they can be avoided in two ways: (1) by compromise; (2) by arbitration. By compromise *(transactio)* we understand the peaceful settlement of the dispute outside of court by a priest designated by the ecclesiastical judge. Here the priest need follow no special rules of procedure but, after hearing the arguments of each contending party, he gives a decision r.r *bono et aequo.* Settlement by arbitration *{compromissum in arbitros)* is effected when at the mutual agreement of the parties their controversy is committed to an individual *of their choice.* The individual so chosen may proceed by way of a formal trial, or summarily, depending on the terms of the contract agreed to by

the parties. Since both compromise and arbitration are in the nature of bilateral contracts, whatever the civil laws of the respective nations rule concerning these kinds of contracts must be observed likewise at this place. But the Church does not permit compromise or arbitration in a criminal trial, nor in a marriage trial, for here we find questions which concern the public welfare, and which cannot be settled by private individuals. Neither can compromise or arbitration apply to a dispute concerning the title to a benefice, since the title to a benefice cannot be conferred by one private individual upon another, but only by the competent ecclesiastical superior. Hence, if the Ordinary consents to the compromise or arbitration in this case, it will be allowed (c. 1925-1932).

Unlike matrimonial, ordination and criminal trials, the parties to a civil trial arc usually permitted to confront each other and their own and the adversary's witnesses. Neither the defender of the bond nor the promotor of justice need take part. It is not necessary that the parties employ lawyers, or have lawyers appointed by the court. 'I'he parties may omit preparing written defenses of their case after the probative stage of the trial is closed, and they may leave it to the conscience of the judge to render a decision simply on the strength of the evidence which has been submitted during the course of the trial. The parties may dispense by mutual agreement from the necessity *of* having the witnesses heard under oath. The judge cannot propose questions of his own to the witnesses,, but only such as are suggested by the parties or their lawyers, saving the case where the judge does not understand the nature of some piece of evidence which has been submitted. Finally, the joining of the issues in civil trials is usually more involved than in other kinds of trials.

Civil trials are comparatively rare in ecclesiastical courts: (1) because they arc often avoided by means of compromise or arbitration; (2) because questions involving temporal rights arc settled by the ecclesiastical courts only in the case of those defendants who enjoy the privilege of the forum, so that if the defendant i; a layman the cleric must sue him in the secular courts: *actor sequitur forum rei;* (3) because in the U. S. contrary custom permits a layman to sue a cleric in the secular courts in purely temporal questions, so that the only civil suits reserved to the ecclesiastical courts are those in which both defendant and plaintiff arc moral ecclesiastical persons, or individual persons who enjoy the privilege of the forum. Thus, a civil trial in the diocesan tribunal might be requested to determine which of two parishes with similar names is the real beneficiary mentioned in a pious legacy.

Chapter III

CRIMINAL TRIALS IN PARTICULAR

A criminal trial has for its object the legal discussion and settlement of a criminal charge with the view to inflicting or declaring an ecclesiastical punishment. The object of every criminal trial is an offense *(delictum),* i.c., the violation of an ecclesiastical law which carries a penal sanction, e.g., heresy, enrollment in forbidden societies, marriage attempted by a cleric in major orders, apostacy from one's Order or Congregation, etc. Only *public* offenses justify a criminal trial. An offense is public which has been divulged, or which has been committed under circumstances that make it probable it will soon become divulged (c. 1933; and 2197, n. 1).

Criminal trials follow the general plan common to other trials, but in four respects they differ somewhat. Wc shall consider, therefore: (1) the preliminaries to a criminal trial: (2) the construction of a criminal trial; (3) criminal trials in clerical exempt religions; (4) some doubtful points of law.

ART. I

Preliminaries to a Criminal Trial

These may be reduced to three: 1) an investigation into the charges prior to the opening of the trial; 2) the reprimand of the delinquent; 3) the formal bill of accusation.

§ 1. The investigation (c. 1939-1946)

Where the offense is public, certain and notorious, the preliminary inquest into the charges is unnecessary, and the promoter of justice at once formulates his bill of accusation. This, however, is seldom the case.

Usually, charges reach the Ordinary through hearsay, rumor, general talk, or by private denunciation on the part of some individual, i.c., a private accusation. If the Ordinary in such cases were to proceed at once against the accused, there might he danger that the good name of the latter would suffer unjustly by false accusations. Hence, the law calls for a secret investigation, and even this is out of place, unless, there arc grave arguments present indicating the probability of an offense, for the good name of the accused can suffer equally by even secret investigations, if the charges carry with them no solid credibility. Hence, no weight ought to be given, e.g., to unsigned letters of denunciation, or to charges made by garrulous, or vile and untrustworthy persons.

But where the accusations seem probably true, because, e.g., supported by details of time, place, frequency, and other circumstances surrounding the alleged offence, the Ordinary can authorize the secret preliminary investigation. For this purpose he will usually delegate one of the synodal judges. Nor should he always appoint the same priest as investigator to discharge these unpleasant duties, lest the latter become the object of general opprobrium.

The investigator is bound to secrecy of office. In fact, he wilj take an *oath* to observe secrecy and to perform his duty faithfully. He has a right to expect help from those who made denunciations, and demand that they furnish him with the names of witnesses, with documents, or other forms of proof. He will in turn put all persons he questions under oath to maintain secrecy. When questioning witnesses he will observe the same rules of procedure as obtain in the ordinary trial, e.g., as regards the oath to speak the truth, to maintain secrecy, the admissibility and non-admissibility of certain types of witnesses, etc. (c. 1944). The investigation is conducted in secret outside of court, and the accused is generally not approached at this stage.

When the investigator thinks that no further evidence is available or required, he submits the acts of the investigation to the Ordinary. After studying the acts of the investigation the Ordinary must do one of three things: 1) if he concludes that the charges arc altogether unfounded, he will issue a decree to that effect, place the acts in the secret archives of the diocese, and consider the whole affair closed; 2) if there are indications of an offense having been committed but not sufficient to justify imperiling the good name of the accused by commencing a public criminal trial, the Ordinary will again file the acts of the investigation in the secret archives, but he may hear the accused, and if the case so warrants, he may administer an admonition and even place him under surveil-

lance; 3) if in the judgment of the Ordinary the investigation establishes the crime as certain or at least very probable, both in respect to its author and to moral imputability, he will generally call the accused before him with a view to soliciting a confession (c. 1946).

§2. Reprimand of the Delinquent

Since it is the mission of the Church to heal rather than to bruise, to correct rather than to punish, a criminal trial may not be begun, generally speaking, if the accused pleads guilty. The opportunity to confess his guilt is given the accused before the commencement of the trial, i.e., when he is invited (not cited) by the Ordinary, at the end *of* the investigation, to explain the charges preferred against him. Should the accused plead guilty at this interview, the Ordinary, in addition to administering a salutary rebuke, may impose some penance or remedial penalty which he deems appropriate to repair any scandal which the accused may have given, and to satisfy for any injury done, e.g., that the delinquent retract certain statements, that he make a public apology, etc. (c. 1947, 1952).

However, the reprimand may not be substituted, and the trial must take place in these cases:

1) In crimes which the law punishes with the severe penalties *of* excommunication reserved *specialissimo modo* or *speciali modo* to the Holy Sec, or with privation of benefice, with infamy, deposition or degradation (c. 1948, n. 1);

2) In crimes which the law punishes with *latae sententiae* penalties, for here the penalty has already been incurred and it must be so declared in the criminal trial (c. 1948, n. 2) ;

3) In those cases in which the Ordinary judges that a rebuke will be insufficient to repair the scandal or injury done (c. 1948. n.3);

4) If the offender has repeated a crime after being twice rebuked (c. 1949) ;

5) If the accused denies his guilt (c. 1954).

If the accused pleads guilty, the trial, where called for, is very short and a mere formality, proof other than his confession being hardly necessary.

§3. The Bill of Accusation

The third requisite preliminary to a criminal trial is the bill of accusation. This is equivalent to the *supplex libellus,* or bill of

complaint in other trials, and in it the promoter of justice enumerates the charges against the accused, quotes the law establishing the charges as penal offenses, and calls upon the court to cite the accused and institute the canonical trial (c. 1955). The promoter of justice is not permitted to formulate and present the bill of accusation until he has been authorized to do so by the Ordinary. When authorizing the promoter of justice to proceed, because judicial reprimand cannot be substituted for the trial, the Ordinary will at the same time hand over to him the acts of the investigation, and from these acts the promoter of justice gathers his material for the drafting of the bill of accusation (c. 1954).

ART. II

Construction of the Criminal Trial

Once the promoter of justice has submitted to the court the bill of accusation, the criminal trial proceeds in the manner of Other trials (c. 1959). Only a few points arc peculiar to the proceedings which need be noted here. The accused is never put under oath in the trial lest he be tempted to perjury (c. 1744). He is bound to have a lawyer either of his own choice, or one appointed by the court (c. 1655, §1).

The plaintiff in criminal trials is the promoter of justice, the defendant is the accused. The promoter of justice has the right to be invited and to be present at every session, and to formulate questions to be proposed by the court to the accused and the witnesses. He may call in witnesses of his own, and submit any other legitimate proof to substantiate the offense and the guilt of the accused. He may challenge the witnesses and other proofs offered by the accused.

In the first session at which the bill of accusation is read to the accused to the end that by admitting some counts and denying others a joining of the issues may be reached, it may happen that the accused pleads guilty to all the charges, even though he refused to do so before, e. g., because he had no idea of the evidence at hand against him. or he has undergone a change of heart. Here, there is still room to administer the official reprimand and to discontinue the trial, if the case is one which does not forbid that the reprimand be substituted, as seen above (c. 1950). But should the accused persist in denying the charges, it will be necessary for the

promoter of justice to have the witnesses formally cited who testified during the preliminary investigation, and to call in new witnesses if such are necessary to overthrow or weaken the arguments which the accused may offer during the course of the trial.

When the judge finally decrees that the probative stage of the trial should he brought to a close he issues a decree to that effect. The accused has the right to examine the arguments which militate against him, and with the aid of his lawyer to prepare a written defense of his innocence. In like manner the promoter of justice prepares his written argumentation in an attempt to find the accused guilty. These defenses are exchanged through the medium of the court, and the accused as well as the promoter of justice has the right to prepare a written rejoinder to the defense of the other.

On the day appointed by the presiding judge, the court convenes and passes sentence, each judge having studied the acts of the trial, and the written defenses of the accused and the promoter of justice. Criminal trials arc conducted by a collegiate court of three or five judges depending upon the nature of the penalty involved (cfr. c. 1576).

In offenses of a more serious nature the Ordinary, once a trial has been instituted, has the right to forbid the accused to receive holy communion publicly, and if a cleric, to forbid him the exercise of the sacred ministry, should this be deemed necessary to avoid scandal (c. 1956). Moreover, the Ordinary may direct that the accused leave the town, or parish, and retire to some other designated place for the time being if there is fear that he might intimidate or bribe the witnesses, or in any other way obstruct the course of justice (c. 1957).

In connection with criminal trials the question arises whether the court must reveal to the accused the names of the witnesses who testified against him. Some authors assert that this is obligatory just as in any other trial, for how otherwise could the accused defend himself or challengethe trustworthiness of his accusers? Others would permit the court to withhold the names, either because such is the practice of the Rota, or because the court usually has ways of ascertaining if the witnesses are manifest enemies of the accused, or because hard feelings must be avoided as far as possible, or because few witnesses would testify in the event their names were published for fear of possible lawsuits based upon defamation of character, or for fear of other recriminatory acts on the part of the accused (cfr. Hughes, James A., "Witnesses in Criminal Trials": C. U. Press, 1937).

At the present day criminal trials are the exception in the Church. Laymen are probably never brought to court due to our separation of Church and State system, with possible *appellatio tamquam ab abusu* involvements. For them there is another court, namely, the court of conscience. Delinquent clerics, on the other hand, are effectively corrected and restrained in most cases either by penances, or by those penalties which can be threatened by way of precept, and indicted extrajudicially by way of decree as we shall see.

ART. II)

Criminal Trials in Clerical Exempt Religions

In these religions it is only the major superiors who can set up court. They need not preside at trials in person, but may appoint a delegated judge, assigning him two or four associate judges according to the nature of the case. Appeals are taken from the provincial's court to the general's court, and from the abbot's to the archabbot's court.

The trial is constructed with the same formalities as the ordinary criminal trial described in the preceding article, and so the major superior must also appoint a notary and promoter of justice. But in the dismissal of a religious with perpetual vows, the special preliminaries antecedent to the trial must be observed as described on p. 386.

ART. IV

Some Doubtful Points of Law

Canon 1933, §4 states that no trial is needed to inflict the penalties of excommunication, suspension and interdict, but these the Ordinary can impose extrajudicially by way of precept. That means the Ordinary has first issued a command to some individual enjoining a particular duty, and threatening one of the above penalties in the event of disobedience. It is only necessary that in these cases the offense be certain.

Some doubts arise in connection with this canon, and they have not been settled as yet by the Holy See, so that canonists are still divided in their opinions, namely:

1) Can the superior apply extrajudicially the above three penalties if these have been established by the *common law* for the offense in question?

2) Can the superior impose suspension by way of precept, intending the suspension as a *vindictive* penalty rather than a censure?

3) Docs c. 1933, §4 contain an *exhaustive* list of penalties that can be applied outside of a court trial? Could the superior, e. g., threaten privation of active and passive voice by way of precept?

The law is clear and allows extrajudicial procedure in the case of certain *penalties,* and again in the case of certain *offenses.*

1) As to *penalties.* Suspension *ex informata conscientia,* from its very nature is imposed summarily (cfr. p. 664).

Penal privation of a *removable* office may be effected outside of a court trial (c. 192, §3).

Dismissal from one's religion can be decreed outside of a criminal trial, except in the case of religious with perpetual vows in clerical exempt religions.

2) As to *offenses.* The superior can proceed extrajudicially against these offenses: a) where a cleric is guilty of non-residence, concubinage or neglect of pastoral duties (cfr. p. 660 ff.); b) where a cleric renounces the faith, attempts marriage, joins the armed service unlawfully, fails to resume the clerical garb, or residence after being warned by his superior (c. 188); c) if a religious renounces the faith, attempts marriage, or deserts with a person of the opposite sex (c. 646); d) in all cases of scandal or grave sin even though no penalty was threatened by the law or the superior, although what kind of penalty is allowed is not clear (c. 2222,§1).

Chapter IV

MATRIMONIAL TRIALS IN PARTICULAR

The vast majority of trials in the Church today concern marriage questions. But not ail marriage questions need be settled by way of a trial; in many cases an extrajudicial process suffices.

In three articles we shall discuss: 1) the formal marriage trial; 2) the summary marriage trial; 3) extrajudicial marriage processes.

ART I

The Formal Marriage Trial

The formal marriage trial is required to determine the validity of a contested marriage in three cases: 1) in impotcncy cases; 2) in defective consent cases; 3) where an impediment of c. 1990 is not certain.

AVith the exception of a few points proper to marriage trials, the procedure required for the ordinary trial as outlined in Chapter I of the present Book must be observed. Until recently the matrimonial diocesan courts often found it confusing when conducting a formal trial to refer to different sections of the Code for the legislation governing its procedure. For it will be noticed that in addition to what we shall say in the present article, and which is taken from Title XX of Book IV of the Code (c. 1960-1989), marriage trials are likewise governed by the general law on trials, as contained in Title I—XVII of Book IV of the Code (c. 1556-1924). To simplify matters the S. C. of the Sacraments on Aug. 15, 1936 *{Acta* XXVIII, 313, *$q.)* issued a lengthy Instruction which restates the canons of the Code on matrimonial procedure in an orderly manner, both the canons which relate to trials in general insofar as they have application to marriage trials, as well as those canons which find particular application to marriage trials. An English translation of the Instruction is found in Bouscaren, *Canon Law Digest,* vol. II, 202, *sq.;* while for an exhaustive commentât}' on the Instruction

the reader is referred to Doheny, *Procedure in Marriage Trials (Formal Cases).*

In this article we shall confine ourselves to those points which are proper to marriage trials, reminding the reader again that in all other respects the common norms laid down above for trials in general must be observed. We shall consider: 1) the competent forum; 2) the personnel of the matrimonial court; 3) the plaintiffs in marriage trials; 4) the proofs admissible in marriage trials; 5) appeals from the sentences of marriage courts.

§1. The Competent Forum

Marriage causes of baptized persons belong by exclusive and inherent right to the Church (c. 1960). The reason is that Christ Our Lord raised the natural contract of marriage to the dignity of a Sacrament when entered into between baptized persons. Thus, Christian marriage was raised to the status of a sacred thing over which the Church alone may claim jurisdiction. Hence, the Church, to the exclusion of the State, judges: 1) concerning the validity of the bond of a Christian marriage; 2) concerning the effects which flow immediately therefrom, i. e., the question *of* legitimacy, and the right to separation from bed and board. But the State exclusively legislates and judges concerning the validity of the marriage of infidels and concerning the purely temporal effects of Christian marriage, e.g., dowry, titles of nobility, the right of succession to an inheritance, etc. (c. 1961).

As to the competency of the different ecclesiastical tribunals among themselves, we must distinguish between matrimonial causes reserved to the Holy See, and those not so reserved.

To the Roman Pontiff, or the Holy Sec, are reserved:

1) The matrimonial causes of supreme Christian civil rulers, those of their children, and of the persons who are to succeed next to the supreme rule; and these causes are reserved directly to the Roman Pontiff (c. 1962, 1557, §1, n. 1);

2) Judgment concerning *ratum et non-consummatum* cases is reserved to the S. Congregation of the Sacraments; or if one party is a non-Catholic. to the Holv Office (c. 1962; c. 247, §3;S. C. Holy Off. Jan. 27, 1928; *Acta* XX, 75);

3) To the Holy Office are reserved marriage cases when it is alleged that a subsequent marriage was rendered invalid due to the faulty application of the Pauline Privilege; likewise the case contemplated in the preceding number (c. 1962).

All other marriage causes may be judged by the local Ordinary's

court. To determine which local Ordinary has competence with re'spect to other local Ordinaries these rules obtain:

1) By reason of contract the judge of the place where the marriage was contracted is competent (c. 1964) ;

2) By reason *of* domicile or quasi-domicile the judge of the place where the *defendam* has a domicile or quasi-domicile is competent (c. 1964). Hence, if the defendant at present lives in a diocese different from that in which he married, the plaintiff has the option of bringing the case to either the judge of the place where the marriage was contracted, or to the judge of the place where the defendant is at present domiciled or quasi-domiciled. But if the defendant has a domicile in one diocese and a quasi-domicile in another, and the plaintiff chooses to sue in the court of the quasi-domicile, the judge of the place of quasi-domicile must first inquire concerning the reasons which prompt the plaintiff to bring his case to this court rather than to the court of domicile, or to the court of the diocese where the marriage was contracted. For it often happens that the court of quasi-domicile is preferred by the plaintiff in the hope that the defendant being less known in such place, and having fewer relatives and friends to testify in his behalf, will be less able to defend the validity of his marriage (cfr. Decree of the S. C. Sacr., Dec. 23, 1929; *Acta* XXII, 168) ;

3) The rule that a marriage case must be brought to the domicile of the defendant suffers no exception even where a wife has been maliciously deserted by her husband, and wishes to contest the validity of her marriage with him. She must bring suit in the place of the husband's domicile or quasi-domicile. Only after she has obtained a decree of legitimate separation from bed and board from the ecclesiastical authorities may she sue her husband in the place of her own domicile or quasi-domicile (Code Comm. July 14, 1922; *Acta* XIV, 529);

4) Where one party to the contested marriage is a non-Catholic, the domicile or quasi-domicile of the Catholic party determines competency even though the Catholic party is the plaintiff (c. 1964). A Catholic wife who has only a separate quasi-domicile of her own, in the supposition that she has not obtained from the Church a decree of legitimate separation from bed and board, may sue her *non-Catholic* husband in the place of her own quasi-domicile or in the place of the husband's domicile (Code Comm. July 14, 1922; *Acta* XIXV, 530).

§2. Personnel of the Court

Marriage trials where the validity of the bond is involved call for a collegiate court of three judges (c. 1576). It is not required that all three judges be present at every session. It suffices if after the *conclusio in causa* each judge be given a copy of the acts of the trial, of all evidence submitted, of the written defenses of the parties and of the defender of the bond, so that they may draw their own conclusions, set down their opinions in writing, and convene at a special session for the rendering of the sentence.

In addition, we have in every marriage trial a notary and a courier. But what is especially to be noted, is that the defender of the bond must be present at, or at least be invited for every session. It is the right and duty of the defender of the bond:

1) To be present at the examination of the parties, witnesses and experts, and to formulate the questions for the court to propose to these individuals;

2) To be informed of all witnesses produced by the plaintiff, of all documents and other proofs, and to challenge the same if the case so warrants;

3) To produce witnesses of his own, documents, and any other kinds of proof in order to weaken the plaintiff's case;

4) After the probative stage of the trial and the publication of the acts, to prepare a written defense in support of the validity of the marriage (c. 1967-1969).

It is obvious that the common weal demands in marriage trials the presence of such an official as the defender of the bond. For it often happens that both parties are desirous of a declaration of nullity, and to that end they may even frame a case beforehand. Since there is no defendant in a case of this kind, and in order to avoid collusion between the parties, the Church requires that the defender of the bond uphold the validity of the marriage, and thus become the defendant *ex officio*. Even where the one party opposes a declaration of nullity, the defender of the bond must nevertheless participate in the trial, becoming a co-defendant with said party in that event.

At times the law requires that the *promoter of justice* also intervene in marriage trials. This applies when the parties are deprived of the right to petition a declaration of nullity (cfr. *infra*). Also it applies when two parties arc united in an invalid marriage and are giving public scandal, and neither petitions to have the marriage declared invalid, and special circumstances urge an official

declaration. It then becomes the duty of the promoter of justice, as diocesan attorney, to either have the parties seek the validation of their marriage, or if this is not possible, to demand that the court declare the marriage invalid. Throughout the trial the promoter of justice will act as plaintiff, the defender of the bond acting as defendant.

§3. Plaintiffs in Marriage Trials

Only the parties to a marriage, and the promoter of justice, have the right to petition a declaration of the nullity of their marriage (c. 1971, §1). Other individuals may simply *denounce* an invalid marriage to the court with the *request* (not demand) that a declaration of nullity be issued (c. 1971, §2).

But the parties to a marriage are debarred from petitioning a declaration of the invalidity of their marriage:

1) In the case of a non-Catholic plaintiff, unless previous permission is obtained from the Holy Office (H.O., Jan. 27, 1928; *Aeta* XX, 75) e.g., it is his first marriage that obstructs his second contemplated marriage with a Catholic who is otherwise free;

2) Where the spouses were the culpable cause of the nullity of their marriage, c. g., by having placed a condition to their consent contrary to the substance of marriage. Here they may do no more than *denounce* their marriage to the court with the request that a declaration of nullity be issued (c. 1971, §1). It then devolves upon the promoter of justice to present to the court a formal bill of complaint if he thinks this justified because of scandal, the impossibility of reconciliation of the parties, now divorced and remarried, and their repentance (Code Comm. July 17, 1933; *Acta* XXV, 345; Code Comm. Mar. 12, 1929; *Acta* XXI, 171).

It follows that the promoter of justice has the right to attack a marriage either when the parties arc forbidden to petition a declaration of nullity, or refuse to do so. But the impediment which invalidates the marriage must be public by its nature.

§4. Proofs in Marriage Trials

In addition to the proofs admissible in ordinary trials, there are three other kinds of proofs peculiar to marriage trials, namely: 1) the testimony of near relatives; 2) bodily inspection; 3) the testimony of the seventh hand.

Testimony of relatives—*Wc* have already seen how in the ordinary trial the testimony of near kin is debarred for the reason that love of kin often prevails over love of truth. But in marriage

trials near relatives of the parties are permitted to testify in their behalf (c. 1974). The reasons are necessity and expediency. Intimate family affairs, such as matrimonial plans and difficulties, arc usually discussed only with one's nearest kin. Hence the prevalence of parents, brothers and sisters, aunts and uncles to testify to such matters in a marriage trial as to: when the parties to the contested marriage first met and under what circumstances, whether the days of courtship were spent in apparent happiness or rather in constant quarrels and bickerings, whether the parties showed signs of joy on the wedding day, whether at any time prior to the marriage the party confided to the witness his opinions concerning divorce, attitude toward offspring, etc.

Bodily inspection— Where sexual impotency is claimed as the impediment invalidating a marriage, it is necessary that both parties undergo a physical examination by experts (c. 1976). Impotency, which is not to be confused with sterility, the latter being no impediment, is the inability to perform the sexual act necessary for procreation. Usually this is caused by some abnormality in the genital organs. At times it may be due to some psychic cause, e.g., frigidity, revulsion on the part of the woman to the sexual act.

Two physicians are to be appointed for the examination of the man, and two midwives for the examination of the woman, unless the latter consents to an examination by male physicians. At the examination of the woman there should always be present an honest matron of good morals (c. 1979).

The physicians, midwives and matron are appointed by the court (c. 1979). Each physician (or midwife) must conduct the examination independently of the other, and must submit to the court, independently of the other, his or her written opinion concerning the question of impotency. Later, each appears in court to answer orally the questions prepared by the defender *of* the bond (c. 1980-1981).

Testimony of the seventh hand— The testimony of the seventh hand *{testimonium septimae manus)* is simply the testimony of seven witnesses who testify to the trustworthiness of the parties to the trial in impotency cases where impotency cannot be proved by bodily inspection cither because one or both parties refuse to submit to an examination, or because the woman has had children by another man. or because the examination has proved the absence of physical

impotency «although there may still be impotency present due to mental causes. These witnesses are called of the *seventh hand* probably because of the ancient custom of raising the hand in the act of testifying.

There must be seven witnesses for one party and seven other witnesses to testify to the trustworthiness of the other party, i. e., 14 witnesses in all. Usually, unless prudence suggests otherwise in some particular case, they are also asked what they know about the circumstances which preceded, accompanied and followed the marriage at issue. Thus, if they can assert that they had heard the parties complain of their childless condition at an unsuspect time, i.e., before the idea of a marriage trial was ever thought of, such testimony adds greater weight than if they simply assert that they believe the parties to be truthful persons, and have a reputation for veracity in general, and can be relied upon in the case under consideration when they state that sexual intercourse between them is impossible.

Where one or the other party cannot produce seven persons (preferably relatives or intimate associates) who know him well enough to testify to his trustworthiness, this fact should be recorded in the acts of the trial, and if the judge cannot e.v *officio* supply for the wanted number, the trial may proceed with fewer witnesses (cfr. c. 1975).

§5. The Appeal

If the tribunal pronounces a marriage valid, the plaintiff has the right to appeal the case to the court of second instance. If this court of second instance likewise pronounces the marriage valid, no further action is allowed on the part of the plaintiff, but he may ask that the trial be reopened at any future time when he comes into possession of new evidence to support his claims. The reason is that marriage trials, like all trials which concern the legal status of persons, never become irrevocably adjudged.

On the other hand, should the court of first instance find the marriage invalid, it is the duty of the defender of the bond to appeal the case to the court of second instance. Should he fail in this his duty, and even though ten days or more have elapsed since the court of first instance passed sentence, the sentence does not become an adjudged matter. It is peculiar about marriage trials that two sentences pronouncing the marriage invalid are needed before the plaintiff can enter upon «a new marriage (c. 1986-1989).

ART. II

Summary Marriage Trials

(c. 1990-1992)

This is a short form of trial in which documents count for more than witnesses. It can be followed when the marriage bond is attacked as invalid by reason of any of the following impediments: I) disparity of cult; 2) major orders; 3) the solemn vow of chastity; 4) a previous marriage bond; 5) consanguinity; 6) affinity; 7) spiritual relationship.

It had been disputed by authors whether the impediment of nonage justified a summary trial, but a recent answer of the Code Comm, said that nonage called for the lengthy solemn, or formal, trial. At the same time the Code Comm, solved another disputed question when it stated that the process spoken of here in c. 1990-1992 was to he considered a trial, not an extrajudicial process *(Acta,* 1944, p. 94).

It is essential in the summary trial that the plaintiff must offer documents which of themselves prove: I) that one of the above impediments existed to invalidate his marriage; 2) that no dispensation from the impediment was granted.

In disparity of cult cases, however, it seems sufficient to prove the non-baptism of one party through witnesses alone. Negative facts can hardly be proved through documents directly. But indirectly this is possible, e. g., where the marriage register, as also the chanccrj- files, show no trace of a dispensation having been granted from a marriage impediment.

Although the impediment in the last analysis is definitely proved by one authentic document alone, e. g., consanguinity through the baptismal register, yet every summary trial will require that a number of other documents be presented to prove that this one main document really establishes conclusive proof. It must be shown, e.g., that a marriage was actually contracted, that no dispensation was obtained, that these are the two parties mentioned in the marriage certificate, that they are the same persons whose names appear in the baptismal register as descending from the same common stock giving rise to consanguinity, that they have been freed from the civil bond of marriage by a civil divorce decree, that at least one of them really desires a declaration of nullity as shown through the written bill of complaint, that at least one is

baptized and held to the impediment and the Church is competent to pass judgment, etc.

All this collateral or supplementary evidence can be put into written form by means of various official documents and the affidavits of the parties to the marriage and of the witnesses, or the court's policy may be to call the parties and witnesses to the place of court and interview them personally, the notary recording their testimony. Nothing in the law, or in the nature of the summary trial, seems to necessitate the personal appearance of the parties and witnesses in court.

The summary and the formal marriage trial have these things in common: 1) the Official, not the chancellor or the vicar-general handles them; 2) he must be competent in respect to other diocesan courts; 3) the parties must be cited, although what this imports is not clear; it may mean that it suffices to give the defendant a hearing anywhere; 4) the defender of the bond must intervene at least to the extent of reading through the evidence consigned to him by the Official, and objecting to the nature of the same, or to its sufficiency, if he wishes (S. C. Sacr. *Provida,* art. 226-228).

The summary trial differs from the formal trial chiefly in these points: 1) there is no joining of issues; 2) lawyers and procurators arc unnecessary; 3) there is no *conclusio in causa;* 4) there arc no written defenses; 5) there is no need of a two-fold sentence declaring the marriage invalid. One declaration suffices unless the defender of the bond appeals against the first sentence to the court of second instance. This court in turn will review the case summarily, and either confirm the first sentence, or remand the whole case to the court of first instance to be tried by way of a formal trial.

For documents and forms generally required and employed in summary trials, cfr. our *"Pastor and Marriage Cases."*

ART. 111

Extrajudicial Marriage Processes

These may be reduced to two categories: 1) the administrative processes; 2) the informative processes.

§1. Administrative Processes

Clandestinity or *defective form cases*—A marriage which a Catholic contracts outside of the Church, either before a non-

Catholic minister or a civil official, can be declared invalid by the local Ordinary, or by the pastor if authorized by him. The chancellor usuallj· gathers the necessary papers, or authorizes the pastor or his assistant to do so, before submitting the evidence for the bishop's declaration of invalidity. These various documents must show: 1) that a marriage was contracted not in canonical form; 2) that one party at least was held to the Catholic form as shown through the baptismal, first communion or confirmation certificates; 3) that the marriage was never validated later in due canonical form; 4) that a civil decree of divorce has been obtained.

Presumed death cases—If one spouse has disappeared, and has not been heard from over a period of years, but there is no conclusive proof of his death, church law, unlike civil law, does not permit remarriage automatically after a lapse of a certain number of years. It is necessary that the bishop, after examining the proofs of death ottered by the surviving spouse, arrive at *moral certainty* that the other has really died. Once he has satisfied himself on this point, the bishop alone issues the declaration of freedom without the need of any trial, or the intervention of the defender of the bond.

Pauline Privilege cases—A marriage contracted by two unbaptized persons may be dissolved in virtue of the Pauline Privilege if: 1) the petitioner is a convert to the faith; 2) the other spouse remains unbaptized; 3) the unbaptized consort refuses to be baptized, or at least to live peacefully with the convert. Once these facts are established the bishop may declare the convert free to contract a new marriage with a Catholic. For documents and forms in all the above cases, cfr. our *Pastor and Marriage Cases.*

§2. Informative Processes

These are conducted with a view to advising the Holy See whether a *dissolution* of a valid marriage may be granted: 1) in so-called *ratum et non-consummatum* cases; 2) in a consummated marriage between a baptized non-Catholic and a non-baptized person, one of whom is converted to the faith, but because of the presence of baptism in the case of one of the spouses, the Pauline Privilege cannot be invoked *{in favorem fidei* cases).

Ratum et non-consummatum cases—Canon 1119 claims for the Church the right to dissolve the bonds of a valid marriage between Christians (baptized persons), or between a baptized and an unbaptized person, provided the marriage was not consummated by natural intercourse. While such a right as this cannot be read explicitly into any text of Sacred Scripture, yet its existence is proved alone

by the long-standing practice of the Church. From the 11th century on the Roman Pontiffs have dispensed from the bonds of such unions on the theory that they arc not perfect symbols of the union of Christ and His Church, and so arc not perfect marriages. In dissolving the bonds of such marriages the Pope proceeds as the infallible interpreter of Holy Writ, i. e., he interprets the words of Christ: *IFhat God hath joined together, let no man put asunder,* as applying solely to a consummated marriage between two baptized persons.

Although the procedure followed in *ratum et non-consummatum* cases is rather lengthy and involved, yet it cannot be strictly called a marriage trial for the simple reason that certain formalities of a trial arc wanting, e. g., no sentence is issued by the Ordinary, or the S. Congregation, but if the divorce is granted, it may be called a favor or dispensation at the most; nor is there a joining of issues, or a court of three judges, or a written defense by the parties, etc. But in most respects the process follows the general outlines of a formal trial, so much so that the S. C. of the Sacraments on May 7, 1923, issued a lengthy Instruction concerning the procedure to be followed *{Aeta* XV, 389, *sq.),* an English translation of which is found in Bouscarcn, *Canon Law Digest,* I, 764, *sq.*

The party (or parties) who desires the dissolution of his non-consummated marriage presents a written petition to the bishop, although it should be worded as addressed to the Sovereign Pontiff. In this petition the facts are stated in rough outline upon which the non-consummation is claimed, and the reasons which will justify the Pope in granting a dissolution, for the Pope in this case needs a just reason since he is dispensing from the divine law by vicarious power.

The petition is transmitted to Rome (the S.C. of the Sacraments, or the Holy Office if one party to the marriage is a non-Catholic). If the Congregation admits the petition, it delegates the bishop to construct the informative process either personally or through a subdelegatcd priest of his choice. The process must prove: 1) the non-consummation of the marriage; 2) the existence of reasons justifying a dispensation. As in the ordinary marriage trial, the parties are cited and questioned, and the wife must submit to a bodily inspection by competent physicians or midwives. If this inspection cannot be conducted, or would prove idle because, e.g., the woman is a widowed mother, each party must furnish seven witnesses to testify to his veracity, the same as in impotency cases (c. 1975, 1976). The defender of the bond participates in the process throughout, prepares questionnaires, challenges the proofs

adduced by the parties, and prepares a written opinion of the case at the end of the proceedings. The acts arc sent to the Congregation, no sentence being passed by the bishop or the subdelegated judge, for their duty is merely to inform the Congregation of the facts arrived at by means of the informative process. The acts at Rome are studied by certain consultors, and if they report favorably, it remains for the Cardinal Prefect of the Congregation to refer the petition to the R. Pontiff, asking that a dispensation be granted from the bonds of the non-consummated marriage. For forms and questionnaires consult our *Pastor and Marriage Cases.*

hi favorem fidei cases—When a dissolution is desired from the bonds of a valid marriage contracted between a baptized and an unbaptized person, because the parties are divorced, and one is now a Catholic convert, or prospective convert desiring marriage with a Catholic, in such case the convert may petition of the Pope a dissolution from the bonds of his (her) first marriage. Here the Pope will again act by vicarious authority as the representative of Christ Himself *{Quodcumque solveris,* etc.). 'I'he Ordinary simply informs the Holy Office of the facts in the case, sends the proofs of non-baptism of one spouse to the first marriage, states the reason which might justify a dispensation or dissolution, e.g., the youthful age of the convert, etc. The defender *of* the bond must take part in this process. The Holy Office issued instructions some years ago how the bishops are to handle these cases. For more information as regards documents, method of procedure, etc., cfr. our *Pastor and Marriage Cases.*

Chapter V

ORDINATION TRIALS IN PARTICULAR

Ordination trials are those conducted to ascertain either the validity of major orders in some particular case, or the presence of the obligations attaching to valid major ordination.

The petition for a trial is sent to the S.C. of the Sacraments if the question at issue is the presence of the obligations attaching to major orders, or if it is the validity of the ordination which is contested for any reason other than a substantial defect in the rite of ordination; in the latter case the petition is sent to the Holy Office (c. 1993).

Where the petition has been sent to the S.C. of the Sacraments, this Congregation authorizes the Ordinary of the diocese to which the cleric belonged at the time of his ordination to conduct the trial. If the petition was sent to the Holy Office, the cause is remanded for examination to the Ordinary of the diocese in which the ordination took place (c. 1993).

The local Ordinary's tribunal will conduct a formal trial from which the defender of the bond will appeal to the court of second instance should the court pronounce in favor of the invalidity of orders, or in favor of the absence of the obligations attaching to the orders. Or the tribunal will conduct merely an informative process, at which the defender of the bond must again be present throughout, and the acts are then sent to the competent Congregation for a decision. A lengthy procedure for these cases is found in *Acta* XXIII, 457, *$q.* and in Bouscaren, *o.c.,* I, 812, *sq.* The question whether a formal trial, or only an informative process, may be conducted by the local Ordinary depends upon the tenor of the rescript of the Holy See (c. 1993).

It may be noted that no trial is required when a cleric contests the validity of minor orders. Should he desire while under minor orders to discontinue further study for the priesthood, it suffices for the local Ordinary to issue a decree reducing him to the lay state. The reason for the simple procedure is that there are no grave obligations such as celibacy attaching to minor orders.

LUO

THE BEATIFICATION AND CANONIZATION OF THE SERVANTS OF GOD

Chapter I

PRELIMINARY NOTIONS

Cultus latriae and cultus duliae—The cult which we pay the saints is that of veneration and invocation. In *venerating* the saints we acknowledge their superior excellence in the spiritual order with respect to ourselves, but not with respect to God. When *invoking* the saints wc petition their assistance, intending that the good gifts we may receive through them come always from God, the original source of every blessing, the saints merely interceding for us. This is not idolatry as some few Protestants still insist. The cultus of the saints, as just explained, does not involve a worshipping of creatures. God alone is worshipped insofar as He alone is honored in His infinite perfections, these being considered intrinsic to His nature. He alone remains the supreme Lord of creation and the source of all gifts.

In the liturgical and canonical language of the Church the cult paid to God is called *cultus latriae,* while that given to the saints is called *cultus duliae.* In the English language those terms would correspond to *worship* and *adoration* in the first case, and to *veneration* and *invocation* in the second case. Whether in any given case the *cultus latriae* or the *cultus duliae* is being shown can be judged not so much from external ceremonies such as the burning of incense, genuflections, etc., but rather from the intention of the individual who offers the cult.

Justification for the cult of the saints is found in natural reason, in Sacred Scripture and in ecclesiastical tradition, *atural reason* prompts men to show special marks of honor and veneration to those who have distinguished themselves in the temporal order, e.g., in the arts, sciences, social service, etc. No less should honor be paid to those heroes of the supernatural order, the saints, who in this world distinguished themselves by the practice of virtue to an exceptional degree. As to invoking the saints who are now in heaven as the special friends of God, this is as reasonable as to rely upon a trusted official in the State to use his influence with the king or president to obtain for us some special favor in the temporal order.

So, too, does 5. *Scripture* sanction the veneration and invocation of the saints. Veneration was paid to the angels or messengers of God in the Old Testament, and to the prophets (cfr. Num. XXII, 31 ; Jos. V, 15). As for the invocation of the Saints, if the Apostles besought the prayers of the faithful, with much more reason may we ask the prayers of those whose sanctity and friendship with God is now placed beyond all doubt (cfr. Rom. XV, 30‘; Thess. V, 25).

Finally, ecclesiastical *tradition* shows that the cult of the saints was not a later innovation as some Protestants maintain, but can be traced to the primitive Church. From the earliest times feasts in honor of the martyrs were observed, sacrifices were offered in their honor, altars and churches were dedicated to their memory.

History and nature of beatification and canonization— In the early Church, martyrs were the first to whom religious honors were accorded. They alone were listed in the canon of the Mass. About the fourth century religious honors began to be paid also to confessors, i.e., to those Christians who suffered torture or imprisonment for the faith though death did not result. In course of time the word *confessor* was broadened to include all non-martyrs who by the practise of Christian virtue in a heroic degree led a life of continual equivalent martyrdom.

In the early Church, also, the question whether public cult could be paid to a deceased person was then, as now, reserved to the ecclesiastical authorities. But in those times the Christian communities were small, and the danger of error and abuse in according religious honors to one who had led a life of piety, or had died for the faith, was correspondingly slight. Hence, the local bishop was considered competent to permit such public cult, nor was the lengthy process of inquiry, as at the present day, followed. The cultus permitted by the bishop was optional, not mandatory. It was confined to his diocese. If the cultus spread to several dioceses in course of time with the sanction of the bishops of those dioceses, it was possible in this way for the universal Church to consent to the cultus so that the servant of God might be considered *virtually* canonized.

Between the 10th and 12th centuries we find Rome taking a hand in these matters. Abuses were bound to creep in. In some cases it was discovered that a supposed martyr had suffered death from political rather than from religious motives. In other cases popular enthusiasm saw miracles in events which later, upon closer investigation, proved to be but natural phenomena. .Alexander III (1159-81) prohibited the veneration of a man who was found to have died in the state of intoxication but whom the faithful honored as a saint because of supposed miracles in the case. The Pope added words to the effect that neither the man in question nor any other person could be venerated without authority of the Roman Church. But since the language he employed left the matter doubtful, bishops continued to proceed with beatifications until the time of Urban VIII. This latter Pope in two constitutions issued in 1625 and 1634 stated quite clearly that henceforth all cases of beatification and canonization were to be reserved to the Roman Pontiff.

Prior to the Urban constitutions there had been no distinction between the terms *venerable, blessed* and *saint,* the words being used interchangeably to mean an exceptionally holy person. But the Urban constitutions now required a two-fold process for inquiring into the virtues, martyrdom and miracles of a servant of God. Upon the completion of the first process and its ratification by the Pope, the servant of God could be called *blessed,* and the act declaring him blessed was called *beatification,* i.e., the individual was declared *beatus.* Upon completion and ratification of the second inquiry the blessed was declared a *saint',* and the act declaring him such was called *canonization,* a word probably derived from the practise of the early Church in placing the names of the martyrs

in the canon of the Mass. The term *venerable,* at least under the Code, may be used as soon as the Pontiff has declared that the servant of God practised the required virtues in a heroic degree. This is not yet beatification, which entitles one to be called blessed, and permits religious honors.

Since the time of Urban VIII beatification is an act which *permits* religious honors to be paid to a servant of God, the permission being *restricted* to a certain locality or to some religious organization. Canonization, on the other hand, carries with it a *command* of the Sovereign Pontiff that the person be venerated in the universal Church. In the one case we have a restricted permission, in the other case a general command.

In declaring a person *blessed* the Pope is liable to error. But it is the common teaching of theologians (not a *de fide* proposition) that the Pope is infallible in his decrees of *canonization.* The substance of the infallible judgment is that the person canonized is now in heaven, and that his life is worthy of imitation. It is argued that on such momentous questions the faithful could be led astray to the great detriment of their souls if God did not preserve from error the chief shepherd of souls. It follows that since canonization implies infallibility, the cultus permitted to the servants of God by individual bishops in pre-Urban days supposed beatification not canonization, since an individual bishop other than the Pope does not enjoy infallibility.

With slight modifications the legislation of the Code on beatification and canonization is substantially the law as contained in the constitutions of Urban VIII issued in 1625 and 1634. Sixtus V, who organized the Roman Curia, reserved questions of beatification and canonization to the S.C. of Rites, and this is the present rule (c. 1999). But the local Ordinary is still competent to initiate in his own name inquiries concerning the virtues, martyrdom and miracles of a servant of God with the ultimate view to his beatification by the Roman Pontiff (c. 1999).

Exceptional procedure—It will be remembered that because Alexander III (1159-81) was somewhat ambiguous in his decretal restricting the authority of bishops to permit public cult to be paid to the servants of God, manv bishops continued as formerly in this matter. On the other hand, as the later Urban constitutions left no doubt that in future only the Pope could allow such public cult, doubts arose concerning the status of those persons who after the pontificate of Alexander III began to be accorded religious honors by permission of the bishop. In answer Urban VIII compromised by declaring on the one hand that such persons were

not be considered beatified, but on the other hand dispensing from the lengthy new procedure for beatification under certain conditions. Namely, if it could be proved that the servant of God had been in possession of public cult for at least 100 years prior to the first Urban constitution (1625), this sufficed to establish the fact of such immemorial cult, nor was it necessary to investigate concerning the fact of martyrdom, of virtues, or miracles.

Thereupon the Pope would confirm the cult and confer equivalent beatification. This procedure is called the *processus per viarn cultus,* or the *processus casus excepti* (c. 2000). This exception is retained in the Code under can. 2125-2135, but with certain important modifications introduced by the S.C. of Rites Nov. 11, 1912 *(Jeta* IV, 705). Now it no longer suffices to prove the fact of immemorial cult, but it must be proved in addition that the servant of God, living before the 16th century, suffered martyrdom, or practised the required virtues in a heroic degree. There is, however, no need to prove miracles save for the canonization of these persons.

'1'he fact of cultus in the excepted cases can be proved by any of the following signs: 1) if the body of the servant of God had been removed from the grave and had been placed under an altar for veneration; 2) if his name had been invoked in public prayers; 3) if his image had been depicted in painting or sculpture with a halo or rays surrounding the head; 4) if anniversaries had been celebrated in his honor; 5) if churches and oratories had been dedicated to his memory; 6) if he had been regarded as the patron of a certain locality; 7) if votive tablets had been attached to his grave, candles lighted, or incense offered there; 8) if there had existed a peculiar office or Mass in his honor; 9) if the title of Blessed had been given to him on monuments, statues, or in public documents.

It must be evident that few causes proceed by way of cult, or the exceptional process today. The process is not required in the case of those who had been accorded religious honors prior to the pontificate of Alex. III, when the local bishop's right to permit public cult to the servants of God had not yet been restricted. The process is not applicable to those who have died since 1525, i.e., within 100 years prior to the first constitution of Urban VIII. It can be followed only in the case of those who died between 1170 and 1525, and who had been in possession of public cult for at least 100 years prior to 1625. It must be proved, moreover, that the cult has continued down to the time the judge pronounces sentence in the process. Among those who have been

equivalcntly beatified and canonized by the exceptional process xve may mention St. Romuald, Norbert, Bruno, Peter Nolasco, Queen Margaret of Scotland, and Gregory VII.

During the remainder of this discourse, therefore, we shall confine our attention to the *ordinary* procedure of beatification and canonization since the vast majority of the servants of God are now beatified and canonized in this way, namely, by way of non-cult *(per viam non-cultus).*

We shall treat our subject in two chapters, in the first chapter dealing with beatification, and in the second with canonization. It should be pointed out at this time that no one is canonized until he is first beatified. The entire subject is contained in Part II of Book IV of the Code (c. 1999-2141).

Chapter II

THE PROCEDURE OF BEATIFICATION

Here we shall distinguish the causes of confessors from those of martyrs, understanding by the word *confessor* a person of either sex who professed a holy life without suffering death for the faith.

ART. I

Causes of Confessors

In beatification causes, whether of confessors or martyrs, two kinds of processes must always be conducted: the episcopal processes and the Apostolic processes, the former always preceding.

The episcopal processes differ from the Apostolic processes in that in the former the local Ordinary, i.e., the Ordinary in whose territory the person died or where miracles occur (c. 2039), acts on his own authority without previous permission from Rome, whereas in the Apostolic processes he acts as delegate of the Holy See. The episcopal processes are in the nature of a grand jury. They aim chiefly at informing the Holy See in general concerning the reputation for sanctity of the Servant of God, of his martyrdom, and concerning the reputed miracles. If the Roman Pontiff decides that sufficient evidence is at hand to make out a case for beatification, he authorizes the Apostolic processes to be constructed, and here the investigation is more exacting, for it must be shown at this stage that the servant of God in addition to enjoying a reputation for sanctity practised certain required virtues in a heroic, i.e., exceptional, degree. Moreover, the miracles are looked into more thoroughly.

We shall briefly describe first the episcopal processes and then the Apostolic processes.

§1. The Episcopal Processes

These arc three in point of purpose, though they may proceed simultaneously, so as to appear as only one process numerically.

The purpose of the one process is to inquire into the writings of the servant of God; that of the other is to gather information concerning his reputation for sanctity and miraculous works; that of the third is to establish the fact that the constitutions of Urban VIII have been observed, i.e., that no public cult has been paid to the servant of God (c. 2038, §2).

After a person's death his reputation for sanctity may arise in different ways. In the case *of* St. Theresa of Lisieux, her reputation for sanctity followed close upon the publication of her autobiography. This work inspired numberless persons to pray to her. Favors were obtained through her intercession, and these were so numerous and miraculous in character, as could be ascertained from the many letters sent to the Mother Superior of the Carmel at Lisieux, that the Bishop of Lisieux (Baveux) began proceedings only 13 years after the death of the saint.

The first thing the bishop does is to constitute a tribunal. He may act as sole judge, but should he prefer to delegate others, these must be three in number and must sit as a collegiate tribunal (c. 2040). There arc required besides a notary (c. 2013), a postulator and a promoter of the faith. The postulator is he who petitions the bishop to start proceedings, and if the bishop began proceedings without being requested, as he may do, he must appoint a priest thereafter to act in the capacity of postulator. Clerical religions usually have their regularly elected postulator for promoting the causes of their own members (c. 2004-2008: 2010-2012).

It is the right and duty of the *postulator* to urge action throughout favorable to the cause, to produce witnesses and documents, to see that the cause is financed, to obtain lawyers, to submit points on which the witnesses should be questioned, etc. (c. 2007). It is the right and dut}· of the *promoter of the faith* to weaken the cause at every stage as far as possible by challenging the admissibility of this or that document, by exposing flaws in the evidence submitted by the postulator, by producing witnesses and documents of his own, etc. (c. 2012). This unpleasant duty has merited for him the jocose title of *advocatus diaboli.*

All the above officials must be priests; whether diocesan or extradiocesan, secular or religious, does not matter. But a religious, because of the danger of undue zeal, cannot be notary in causes of his own religion (c. 2014) ; rather a diocesan priest is generally appointed notary. The postulator and the promoter of the faith can be non-Roman priests in the episcopal processes (Code Comm., Jan. 16, 1936; *Acta* XXVIII, 178); cfr. also c. 2011. But when

the Apostolic processes begin, the postulator and the promoter of the faith must be priests with residence at Rome, and the latter must be an official of the S.C. of Rites (c. 2004, 2010).

Process concerning the writings—This is the first of the three episcopal processes. It has for its object the gathering of the writings of the servant of God, and the ascertaining of their integrity and authenticity. For before the Holy See advances to the beatification of a servant of God there must be certainty that nothing contrary to faith or morals is contained in his writings.

Under this head come sermons, letters, diaries, autobiographies, and any other writings, whether published or only in manuscript form, whether written in the person's own hand or at his dictation (c. 2042).

To obtain the writings in question the bishop issues a decree to be read in every parish of the diocese, and if the case is such, in every house of the religion to which the servant of God belonged. If there is good reason to believe that his writings may be found in another diocese, the assistance of the bishop of that diocese is requested by means of rogatory letters (c. 2043, 2044).

All the faithful who are in possession of any of the writings of the servant of God have a grave obligation in conscience to submit them to the episcopal court (c. 2023-2025). If it is desired to retain the writings, the possessor must nevertheless permit the court's notary to make an authentic copy of them (c. 2045).

The process under consideration is concerned not merely with gathering the writings of the servant of God but also with ascertaining their integrity, authenticity, and how the individual came into possession of them. All this business requires several sessions of the tribunal. Oaths must be administered, witnesses questioned, and often handwriting experts called in. From this point of view the process is called the *processiunculus diligentiarum*.

Since it is not for the episcopal court, but rather for Rome, to examine the orthodoxy of the writings, when it is decided that all the writings have been gathered, these together with the acts of the process *{processiunculus diligentiarum)* are carried at once to Rome by a bearer chosen by the episcopal court. This applies even though the other two processes, of which we shall speak, have not vet begun, or if begun, have not yet been completed (c. 2061).'

The informative process—This and the following process may be constructed by the same court which supervised the gathering of the documents. The aim of the present process is to gather infor-

mation concerning the general reputation for sanctity of the servant of God, and concerning the reputed miracles (c. 2038, §2, n. 2).

The law requires that at least ten witnesses testify in this process, two of whom must be presented by the court or the promoter of the faith, the rest may be called by the postulator (c. 2020, §2). In practise many more witnesses arc called in, which requires a great number of sessions and much time.

Generally, anyone may testify, including relatives of the deceased, domestics, even heretics and infidels. But the servant of God's confessors arc excluded, as also the judges, postulator, and lawyers (c. 2027).

The questions are proposed to the witnesses directly by the court. The court receives the questions from the promoter of faith, who has drafted his questionnaires in harmony with the points submitted by the postulator of the cause. A typical list of such questions is found in Macken, *The Canonisation of Saints,* Benzinger Bros., 1909, p. 84-87; also in *Codex pro postulatoribus causarum beatificationis et canonizationis* bv Lauri-Fornari, Rome 1923, n. 51-53.

It is obligatory to call in as witnesses those who lived, or had been associated, with the servant of God, e.g., his confreres in religion, his brother-priests, etc. Likewise anyone who has some knowledge of the servant of God which might affect his cause adversely is bound to reveal such knowledge to the court (c. 2023-2024).

All witnesses must explain the source of their knowledge, otherwise their testimony is valueless. It is immaterial whether they arc eye witnesses or hearsay witnesses (c. 2029).

If the servant of God was a religious, at least half the witnesses must be non-members of his religion (c. 2030).

All documents which may bear upon the question of the servant of God's sanctity, or of his miracles, must be submitted in this process. We do not refer to his writings at this time (c. 2032-2036).

When all witnesses have been heard and all documents submitted, the acts arc published and two copies thereof are made by hand, one copy to be preserved in the diocesan archives, together with the original, the other to he taken to Rome by a special bearer appointed by the court. Both copies are bound and scaled by a special seal, the description of which must be set down in writing, one copy of the description to be kept in the diocesan archives, the other to be carried to Rome together with the acts of the informative process (c. 2052-2056; c. 2063, §3).

Process concerning non-cult—We are treating of the ordinary

procedure of beatification, a procedure which supposes the absence of cult given to one who died after the year 1525. In any particular case where public cult has been shown to a servant of God against the prescriptions of Urban VIII, i.e., to anyone who died after the year 1525, his cause will not be permitted to proceed until all signs of public veneration have been removed in the judgment of the Holy See. This is partly to punish violations of the Urban constitution, partly to secure an impartial judgment of the case, a judgment which should not be influenced by the pressure of public opinion.

Accordingly, the grave of the deceased is visited, and the room where he lived or died, and any other place where one could suspect that signs of devotion might have been paid to the departed servant of God (c. 2058). What these signs of public cult reserved to the beatified arc, we have considered elsewhere.

Four witnesses must be questioned on this point, two of whom must be cited *ex officio,* (c. 2020, §1; c. 2057). There is no need of exhuming the body at this time.

When the investigation is concluded, the episcopal court gives sentence concerning the presence or absence of public cult. It then sends the acts of this process together with its sentence to Rome. If it is discovered that public veneration has been paid (a rare contingency at the present day), Rome will give orders that the abuse be ended, and will suspend further procedure until this order is complied with (c. 2060; c. 2085).

§2. The Apostolic Processes

The Apostolic processes, as distinguished from the episcopal processes, are those which are conducted by authority of the Holy See, partly outside of Rome, but mostly at Rome itself, by the S. C. of Rites.

As soon as the writings of the servant *of* God have arrived in Rome the postulator begs of the Roman Pontiff that these be examined. The Pontiff, thereupon appoints one of the cardinals of the S. C. of Rites to act as *cardinal relator* in the cause, with the duty of supervising the entire Apostolic process and acting as president of the board at the discussions to follow. This cardinal in turn chooses certain theologians to review or examine the writings from the viewpoint of their orthodoxy. From here on the *General Promoter of the Faith* who is an official of the S. C. Rites takes a hand in the case. He is assisted by a Roman sub-promoter of the faith with respect to work which must be done at Rome (c. 2009-2012). At this time it is the duty of the general promoter of the faith,

or his assistant, to examine the objections raised by the readers (revisers), to add difficulties of his own, and to turn a copy of these over to the postulator who is assisted in answering the difficulties by one or more theological lawyers. The difficulties against the writings of the servant of God, together with the defense of the lawyers, are put into printed form, and copies thereof are distributed to the cardinals and consultors of the S. C. of Rites. On the appointed day, after having studied the matter thoroughly beforehand, they come together and vote on the writings. If the vote is favorable, a decree is issued to that effect, and the Holy Father is asked for a rescript permitting the cause to proceed to the next stage (c. 2065-1072).

The next stage is the examination of the informative episcopal process (c. 2073-2084). The acts of the case arc again copied at Rome, an accurate translation of them is made, as also a summary. This is put into printed form, copies thereof are given to the promoter of the faith, and the postulator, and the lawyers. The promoter of the faith raises objections, if warranted, against the validity of the episcopal process, and against the sufficiency of the proof to establish a general reputation for sanctity and for real miracles. These objections are answered by the lawyers. The objections, answers and a summary of the life of the servant of God are printed and distributed to the cardinals. After studying the matter carefully, the cardinals meet and vote on the question: *whether the commission should be signed for the introduction of the cause.* If their vote is favorable, the Pope is asked for his *placet,* and this being secured, the cause passes entirely out of the hands of the local Ordinary, and henceforth, he cannot act save as delegate of the Holy See (c. 2073-2084). It should be remarked at this time that before anything at all is done about the cause at Rome, persons eminent in dignity or authority, c. g., civil rulers, cardinals, bishops, generals of religious orders, etc., are approached by the postulator with the object of having them petition the Holy Father to take up the cause (c. 2077).

The next step is for the cardinals to meet and vote upon the question of non-cult. The acts of the episcopal process which had to do with this matter arc examined by the promoter of faith who raises objections and difficulties, and these are answered as usual by the lawyers. These difficulties and answers together with a summary of the acts of the episcopal process *super non-cultu* form the material of the cardinals' discussion and vote. If the vote is favorable and the cardinals agree as to the absence of public cult in the case, a decree is issued to the effect that the cause may proceed

further. Thereupon begin the Apostolic processes (c. 2085-2086).

For the sake of clarity we shall distinguish between the Apostolic processes conducted outside of Rome, i. e., in the diocese where the episcopal processes had been constructed, and the Apostolic processes conducted at Rome.

Apostolic processes outside of Rome—The purpose of the Apostolic processes outside of Rome is to establish the heroic sanctity of the servant of God, and the fact that miracles have been performed. These points may have been covered in the episcopal processes, but now the investigation is more thorough and it is supervised at every stage by the Holy Sec.

The first thing to be done is for the postulator at Rome to petition the Roman Pontiff for rogatory letters that judges may be delegated. Five such letters are granted, and the postulator directs one to the bishop, and the rest to those whom the bishop selects to act as the other four judges in the Apostolic trial. The postulator, since he must live at Rome, appoints a vice-postulator to represent him in the diocese. The general promoter of faith at Rome appoints one or more priests to represent him in the diocese as sub-promoters of the faith (c. 2087-2097).

Again witnesses arc called, some by the postulator, others *ex officio,* the rules governing their admissibility or compulsory appearance being the same as those which hold in the episcopal processes. Documents likewise arc submitted. The questionnaires now formulated bjr the Roman promoter of the faith are more exhaustive than those employed at the episcopal processes. They inquire first into the continuation of the reputation for sanctity. But if this inquiry is dispensed with by authority of the Roman Pontiff, especially in view of the recency of the episcopal processes, the questionnaires will be restricted with a view to ascertaining whether the servant of God practiced the theological virtues of faith, hope and charity in a heroic degree, and whether the same can he said of the cardinal virtues of prudence, justice, temperance and fortitude. At the sessions which inquire into the miracles there must always be present a physician who from his experience with medical science can propose questions, the answers to which will aid in distinguishing natural from miraculous phenomena (c. 2087-2097). A typical list of questions to ascertain the heroic sanctity of the servant of God is found in Macken, *o.c.* p. 142-154.

Although the sessions covered by the Apostolic trial outside of Rome will be very numerous, yet the trial should not extend beyond two years, otherwise a papal dispensation will be required to prolong the investigation further (c. 1095).

Before the Apostolic trial outside of Rome is brought to a close, the remains of the servant of God must be exhumed and the body identified. The results of this procedure must be incorporated in the acts of the trial (c. 2096).

Upon the conclusion of the process two copies of the acts arc made by hand. Both are bound and scaled, one being kept in the episcopal archives together with the original acts, the other being taken to Rome by an official bearer (c. 2097).

The Apostolic process at Rome—This consists of three discussions: 1) concerning the validity of the Apostolic trial conducted outside of Rome; 2) concerning the presence of heroic sanctity; 3) concerning the presence of miracles. It must be observed that the Apostolic trial outside of Rome dealt chiefly with fact finding. It now devolves upon the S. C. of Rites to appraise and interpret these facts, and to draw appropriate conclusions.

'Fhe first discussion concerns the validity of the Apostolic process outside of Rome. Here the acts are examined by the promoter of the faith, his objections are conveyed to the lawyers for the cause who answer the difficulties, and all this matter is printed and submitted to the authorized cardinals and officials of the S. C. of Rites for their deliberation. On an appointed day the above cardinals and officials meet and vote on the question whether the .Apostolic trial can be considered valid. If their vote is favorable, the Pontiff is requested to confirm the vote and to authorize the decree permitting further steps to he taken (c. 2098-2100).

The second discussion has for its object the practise of the required virtues in a heroic degree. In general wc may say that heroic virtue is the habit of performing good acts to a very remarkable or exceptional degree. In particular, the standard of excellence demanded may be gathered from the questions which are proposed at the Apostolic triai, a typical list of which may be found in the sources already referred to. It should be noted that the discussion concerning the virtues may not be begun until 50 years after the death of the servant of God, unless a papal dispensation is granted. The material for the discussion in the first meeting is a summary of the acts of the Apostolic trial, a summary of the life of the servant of God, the difficulties of the promoter of the faith and the answers of the lawyers. This is all put into printed form. The material for the discussion in the second meeting is mostly composed of the difficulties raised by the cardinals and consultors at the preceding meeting. For it must be noted that three meetings are called to discuss the heroicity of the virtues, namely, the antepreparatory meeting, the preparatory meeting and the general

meeting. At these meetings are present the cardinals of the S. C. of Rites and the consultors. The third meeting is held in the presence of the Pope. If the vote is favorable, the Pontiff reserves his decision until a later day to give himself to prayer and reflection. If he confirms the vote, he orders that a decree be issued in which it is stated that the servant of God possessed the required virtues in a heroic degree. From this moment the servant of God can be called *venerable,* though he is not yet beatified (c. 2101-2115).

The third and last discussion decides the question of miracles. The acts of the Apostolic process from this viewpoint are studied not only by the promoter of the faith but also by two competent physicians. Their difficulties are answered by the lawyers for the cause. In the usual three meetings, namely, the antepreparatory, the preparatory and the general meeting, the cardinals and consultors, having studied the miracles beforehand, and the difficulties of the physicians and the promoter of the faith, and having weighed the defense of the lawyers, convene and vote on the questions: 1) whether a person has been really cured; 2) whether the cure was miraculous. The last meeting is held in the presence of the Pontiff, and if the vote of the consultors and cardinals is favorable, the Pontiff, after some days' delay, makes known his decision. If this is favorable and he approves of the miracles, a decree to this effect is drawn up. At a later date the cardinals and consultors convene to vote on the question: whether the beatification can be proceeded with in safety. This being given a favorable vote, and later confirmed by the Pope, a decree *super tuto* is issued, and the date is set by the Pope for the solemn beatification in S. Peter's Basilica (c. 2116-2124).

ART. II

Causes of Martyrs

Thus far we have considered the process of the beatification of confessors. With few variations the beatification of martyrs proceeds along the same lines.

The episcopal processes come first, as in the causes of confessors, and they deal with the writings of the martvr and the fact of martyrdom (c. 2048, 2038). But no inquiry is made into the general reputation for sanctity. If miracles arc alleged, these arc looked into, but miracles are not strictly required. Signs suffice, and if not even these are present, the Pope may be asked to dispense from their

requirement (c. 2116, §2) . By signs as distinct from miracles, we understand unusual events not measuring up to the standards of a miracle, e. g., a brilliant light surrounding the body of the martyr, a supernatural odor proceeding from the wounds, etc.

The results of the episcopal processes, including the process *de non-cultu* (c. 2038), arc copied in the usual way, bound and sealed, and one copy is carried to Rome by an officially appointed bearer. At Rome the validity of the processes is examined, also the writings of the servant of God, the martyrdom, and miracles or signs, and if all things are favorable, the Pontiff signs the commission for the introduction of the cause.

The Apostolic trial outside of Rome is constructed in the same way as in the causes of confessors, save that the virtues are not looked into, nor miracles examined if these are absent (c. 2102). The acts being taken to Rome, the validity of this trial is examined. Then in the three usual meetings, namely, the antepreparatory, the preparatory and the general meeting, the martyrdom and miracles, if any, arc simultaneously discussed (c. 2104).

Chapter III

THE PROCEDURE OF CANONIZATION

Once the servant of God is beatified, the gravest obstacles to his canonization have been removed, and canonization becomes a relatively simple matter. It merely suffices to prove that two new miracles were wrought at his intercession subsequent to beatification (c.2138, §1).

As soon as new miracles are reported, the Pope is requested by the postulator to permit the reopening of the cause. The Apostolic trial is again held outside of Rome, if such is the case, namely, in the diocese where the supposed miracles occurred. The trial is constructed in the same way as for beatification. The results are taken to Rome and studied in the same way as the miracles in beatification causes. At the three usual meetings the cardinals and consultors vote on the question: 1) whether there is a real and permanent cure; 2) whether the cure is miraculous. The vote in the third meeting being favorable, the Pontiff reserves his decision for a few days. If later he approves of the miracles, he orders that a decree to that effect be drawn up. At a latter meeting of the cardinals and consultors, the question *super tuto* is discussed, namely, whether the canonization can be proceeded with in safety. After their favorable vote, the Pope again reserves judgment. Later if he approves, he orders that a decree *super tuto* be issued, and sets the day for the solemn canonization in St. Peter's (c. 2136-2141). For a description of the ceremonies of beatification and canonization cfr. Macken, *o.c.,* p. 234-261.

Corollary

At this time it is opportune to point out, in view of the lengthy procedure just described, how unfounded are the charges of those who would accuse the Church of arbitrariness in raising her faithful children to the honors of the altar.

To quote Macken (o.c. p. 35) : "There is no doubt that the formalities of these inquiries, consecrated by ancient usage, are precautions taken to guard against error and falsehood and to insure that the truth shall shine forth in all its brilliancy and splendor.

The investigations arc of the most searching character, extending over many years, and sometimes from century to century. The whole life of the reputed saint is subjected to the most minute and thorough inquiry, and this is especially true of the writings, the virtues and the alleged miracles. The *fierce light which beats upon the throne* is as nothing compared to this careful and elaborate inquiry. The proceedings throughout are conducted with much greater care and formality than the most important suit at law. The history of secular jurisprudence can show us nothing approaching the extreme circumspection observed in these investigations. Numerous witnesses are examined, who must all have an intimate knowledge of the case, and at least some must possess a local and personal acquaintance with the facts. Expert witnesses are called, and the whole evidence, which is generally of a voluminous character, is thoroughly sifted by able and impartial intellects. The judgment of one court is revised by another, and the final decision in all processes is reserved to the Holy Sec. Thus the credibility of direct and reliable testimony is united to the authority of the most serious and competent judicial consideration."

The Process of St. Theresa of Lisieux

The theory of beatification and canonization processes may appear in a clearer light if we append a summary of the process of one whose name has so recently been placed upon the calendar of the saints. It must be observed, however, that the rapidity of the canonization in the case of St. Theresa was exceptional, due to the numerous and remarkable favors obtained at her intercession, which induced Pope Benedict XV' to dispense from the law requiring an interval of 50 years to elapse between the death of the servant of God and the discussion of the heroicity of her virtues.

St. Theresa was born Jan. 2, 1873 at Alençon, France, of Louis Martin and Marie Guérin. Baptized Marie Françoise Thérèse. Professed religious vows Sept. 8, 1890 in the Carmelite monastery of Lisieux. Died Sept. 30, 1897 at the age of 24.

Episcopal process begun by the Bishop of Bayeux-Lisieux with a decree issued March, 1910, ordering a search for the writings. July, 1910, the episcopal court was established. First session for swearing in the officials occurred in the chapel of St. Mary's College, Aug. 3, 1910, and the last (109th) session in the seminary chapel at Bayeux. Remains exhumed Sept. 6, 1910, and transferred a short distance from the original grave in the cemetery of Lisieux.

Acts of the episcopal process comprised no less than 3,000 closely

written pages. Most sessions took place in the Carmelite chapel of Lisieux and in a room of the cathedral chapel at Baveux. Forty-five witnesses testified in addition to consulting physicians.

In February, 1912, the hearer laid the copy of the acts before the S. C. of Rites. Cardinals, bishops and religious superiors begged Pope Pius X to permit the introduction of her cause.

June 9, 1914, Pius X signed the decree of the Commission of the Introduction of the Cause.

Rcmissorial letters from Rome authorized Msgr. Lemonnier, Bishop of Bayeux to appoint a tribunal in his diocese for the Apostolic process. This closed Oct. 30, 1917, after 90 sessions. Records of process covered 2,500 pages. The grave was opened and the body identified Aug. 10, 1917.

Rome recognized the validity of the process. The antepreparatory meeting gave a favorable decision June 1, 1920; the preparatory voted "yes" Jan. 25, 1921, the general meeting approved Aug. 2, 1921. On Aug. 14, 1921, Benedict XV declared the heroicity of the virtues.

Miracles approved in the general meeting Jan. 30, 1923, and confirmed by Pius XI, Feb. 11, 1923. Mar. 6, 1923, decree *super tuto* received favorable vote. Solemn beatification in St. Peter's Apr. 29, 1923.

Cause reopened June 27, 1923. One miracle examined in the diocese of Parma, Italy, the other in the diocese of Maline, Belgium. July 11, 1924, both processes were ratified as to validity.

In the general meeting on Mar. 7, 1925, miracles were voted on favorably. Decision confirmed by Pius XI, Mar. 19, 1925. Mar. 29, 1925, decree *super tuto* issued. Canonization May 17, 1925.

ree

EXTRAJUDICIAL PROCESSES

The Code at this place does not consider all possible extrajudicial processes. Wc have, c. g., already learned about the procedure required to dismiss religious extrajudicially (p. 383 ff.). And we have spoken of extrajudicial procedure followed in certain declarations and decrees of marital freedom (p. 627 ff.).

At this time the Code is concerned with some few other matters in which it lays down specific norms for extrajudicial procedure, namely: 1) in the non-penal removal and transfer of pastors; 2) in the punishment of clerical non-residence, concubinage, or neglect of pastoral duties; 3) in the application of suspension *ex informata conscientia.*

Outside of the above cases where the Code in one place, as it were, sets down a series of formalities for extrajudicial procedure, one is often at liberty to proceed as he sees fit, provided the matter is not one reserved for the courts, and provided he observes the substantive law of the Code. He will often find, however, at the end of the transaction, if he has really observed the substantive law, that he has followed a series of formalities, even though this scries of acts was not set down in one place of the Code. He will discover that his liberty of action was only apparent and not at all real. Wc have in mind the superior who desiring to proceed against a delinquent cleric extrajudicially, and in the spirit of the ideal, first gives a kind and paternal admonition, and this failing, proceeds, however reluctantly, to a rebuke, then to an informal precept, then

to a formal precept with a threat of punishment, then to surveillance, then to imposing the penalty in authentic form after ascertaining guilt and disobedience through the usual evidence. We have in mind also the procedure followed, no matter how unconsciously, by the pastor from the first interview with the intended spouses to the moment of their wedding. Hence, extrajudicial procedure does not always imply full freedom of action, simply because the Code may not set down in consecutive canons all the steps and formalities called for. See also what was said in general on p. 575-576.

It remains at this time to discuss in three chapters: 1) the non-penal removal and transfer of pastors; 2) the manner of proceeding against clerics guilty of non-residence, concubinage, or the neglect of pastoral duties; 3) the manner of inflicting suspension *ex informata conscientia.*

Chapter I

THE REMOVAL AND TRANSFER OF PASTORS

At this place the Code speaks of the non-pcnal removal and transfer of pastors. If a pastor is to be removed from office in punishment, either a court trial is held, or the procedure outlined in chapter II below is followed if the offense is one of the three to be mentioned. Otherwise see p. 617-618, 696-697.

Since on the one hand a pastor could suffer loss to his good name by arbitrary removal and transfer, while on the other hand the good of souls might suffer if the bishop's hands were tied so that he could not act save in cases where a pastor were found guilty of criminal conduct, and because removals and transfers are comparatively frequent and necessary in the public life of the Church, therefore, in order to avoid futile and annoying recourses to the Holy See from the episcopal decrees of removals and transfers, the lawgiver has seen fit to benefit all parties concerned by setting down at this place a series of formalities to be observed when the bishop removes or transfers pastors for *administrative* reasons, short of guilt, i. e., for the good of souls.

The Code here has in mind the removal and transfer of *secular* pastors only. As to religious pastors, these can be removed by the bishop, or the religious superior *ad nutum* as we saw on p. 266.

Since the legislation to be considered is quite clear in itself, we shall content ourselves with a mere restatement of the pertinent canons of the Code on the matter under consideration.

ART. I

Formalities to be Observed in All Removals and Transfers

In the processes to be described a notary must always be employed who shall commit to writing all the acts *of* the process, and these acts shall be subscribed by all other persons to be mentioned, and shall be kept in the archives (c. 2142).

Whenever warnings are required, these can be given orally

in the presence of the chancellor or some other official of the Curia, or before two witnesses, or by means of a registered letter with receipt of delivery requested from the post office. An authentic copy of the warning should be filed in the archives, as also an authentic document attesting to the fact that the warning was administered or delivered. He who prevents the warning from being administered is considered sufficiently warned (c. 2143). If the whereabouts of the cleric are unknown, there is no need of inserting the warning in a newspaper, nor of posting a copy thereof on the doors of the chancery (Code Comm., Nov. 24, 1920; *Acta* XII, 577). 'I'he cleric is supposed to observe the law of residence.

The synodal examiners, the parish priest consultors and the notary who are employed in these processes, after first taking an oath to that effect at the commencement of the process, arc bound to observe secrecy concerning whatever they learn by reason of their office, and especially regarding secret documents, the discussions at the consultations, the way the votes were cast, and the reasons advanced by different voters for their opinions. If they violate these rules, they shall not only be removed from office, but they may also be punished by the Ordinary with a befitting penalty, *servatis servandis;* moreover, they must make good any damages which they may have caused (c. 2144).

In the following processes affairs are transacted summarily, but it is not forbidden to hear two or three witnesses, whether these are called *ex officio* by the Ordinary, or presented by the party, unless the Ordinary, after hearing the consultors or examiners, concludes that the presentation of the witnesses is merely to delay a decision. Witnesses and experts shall not be heard save under oath (c. 2145).

From the Ordinary's decree there is only one remedy, namely, recourse to the Holy See. If recourse is taken, all the acts of the process shall be transmitted to the Holy See. Pending the recourse, the Ordinary cannot validly and permanently confer the parish or benefice of which a priest has been deprived upon another cleric (though he may appoint a vicar substitute); cfr. c. 2146. Recourse is allowed within ten days from the reception of the Ordinary's decree, and the cleric shall inform the Ordinary that he is taking recourse (S.C. Council, Jan. 14, 1924; *Acta* XVI, 162).

In the processes to be described it will make for clearness if one remembers that a removable office holder is usually given one chance to explain and two notices or warnings, whereas an irremovable cleric is given two chances to explain and three notices or warnings.

ART. II

Removal of Irremovable Pastors

An *irremovable* pastor can be removed from his parish for any cause which renders his ministry harmful or at least fruitless, even though the cause is not imputable to him in guilt. Such causes or reasons arc especially the following:

l) Incompetency, or a permanent mental or bodily infirmity, which renders the pastor incapable of discharging his duties properly if, in the judgment of the Ordinary, adequate provision for the good of souls cannot be made through the appointment of a vicar adjutant in accordance with c. 475;

2) The odium of the people, even though it be unjust and not general, provided it is *of* such nature as to prevent the ministry of the pastor from bearing fruit, and provided it is foreseen that this popular attitude will not cease within a short time;

3) Loss of the pastor's good name among upright and serious people, whether this results from levity in the pastor's conduct and general manner of life, or from a past delinquency which is now brought to light although it has escaped punishment by reason of prescription, or from the misconduct of a member of his household, or of a relative, unless the pastor's reputation may be sufficiently restored through the departure of said individual or individuals;

4) A probable occult delinquency imputed to the pastor from which the Ordinary prudently foresees the possibility of grave offense to the faithful ;

5) Maladministration of temporalities gravely detrimental to the church or benefice, whenever this evil cannot be remedied either by withdrawing from the pastor the right of administration, or in some other way, even though the pastor otherwise exercises his spiritual ministry with success (c. 2147).

Whenever in the prudent judgment of the Ordinary the pastor seems to have any of the above reasons verified in his case, he (the Ordinary) after having heard the advice of two *synodal examiners,* and after having discussed with them the reality and serious nature of the reason for removal, shall invite the pastor orally or in writing to resign the parish within a fixed time, unless there is question of a pastor who is mentally afflicted. For the validity of the process it is required that the invitation state the reason for the removal and the proofs establishing the reality of the reason (c. 214S).

If within the stated time the pastor neither resigns, nor asks

for a delay, nor challenges the reasons advanced for his removal, the Ordinary shall remove the pastor from his office at once, neither is it necessary that he abide by the ruling of c. 2154 in this case, provided he has first made sure that the pastor was notified of the invitation to resign, and that he was prevented by no legitimate impediment from answering. If the Ordinary is not certain of these two points, he shall make certain thereof either by repeating the invitation to resign or by extending the term for the giving of an answer (c. 2149).

If the pastor resigns his parish, the Ordinary shall declare the parish vacant by reason of resignation. But the pastor may substitute for the reason adduced by the Ordinary another reason less distasteful, provided it is true in fact and honorable, e. g., that he resigns in order to decline to the wishes of the Ordinary or because *of* poor health, etc. The resignation may be made absolutely or conditionally, provided the conditional resignation can be lawfully accepted by the Ordinary, and is in fact so accepted. Moreover, the resignation to be valid must be made in writing, or orally in the presence of two witnesses (c. 2150).

If the pastor wishes to attack the reason for the removal as advanced in the invitation to resign, he may request time to produce his arguments, and the Ordinary may grant him this delay according to his prudent judgment, provided the delay does not seem likely to prove detrimental to the good of souk (c. 2151).

For validity it is necessary that the Ordinary consult with the two aforementioned synodal examiners concerning the reasons offered by the pastor against the invitation to resign, and that he either approve of the reasons or reject them. His decision, whether affirmative or negative must be made known to the pastor by wav of a decree (c. 2152).

Within ten days the pastor can interpose recourse to his Ordinary against the decree of removal, and, lest he act invalidly, the Ordinary must, after having heard two *parish priest consultors,* examine, approve or reject the new objections which the pastor may offer. And these he shall weigh, admit or reject jointly with the original objections in a meeting with the consultors. At this stage the pastor is permitted to offer new witnesses which he can prove he was unable to produce prior to now, but subject to the ruling of C. 2145, §1. The Ordinary's decision must again be made known to the pastor by means of a decree, i. e., in a written order (c. 2153). Recourse to the Holy Sec against this final decree is allowed within ten days.

Having conferred with the synodal examiners or the parish

priest consultors who took part in decreeing the removal, the Ordinary shall provide for the removed pastor as best as he can by either transferring him to another parish, or by giving him another office or benefice for which he is competent, or by allowing him a pension, as the case may be and the circumstances warrant. Other things being equal, more favor should be shown a pastor who resigns than a pastor who has been removed (c. 2154).

The question of how the removed pastor is to be provided for may be determined by the Ordinary in the decree of removal itself, or later on, but as soon as possible (c. 2155).

A priest who has been removed from his parish must leave the parish residence as soon as possible, and he must turn over to the new pastor or the administrator whatever belongs to the parish. But if the removed pastor cannot conveniently transfer from the parish residence by reason of infirmity, the Ordinary shall leave him the occupancy of the house, even the exclusive right of occupancy if need be, and this as long as his infirmity continues (c. 2156).

ART. III

Removal of Removable Pastors

A *removable* pastor may also be removed from his parish for a just and grave cause in accordance with c. 2147 (c. 2157). That canon contains the reasons justifying removal of an irremovable pastor, and they apply with equal, if not greater, force to the case of a removable pastor.

If the Ordinary judges that one of the aforesaid reasons is present in the case, he shall warn and exhort the pastor in a fatherly manner to resign his parish, indicating at the same time the reason which renders his pastoral ministry harmful to the faithful or at least without effect (c. 2158).

If the pastor neither resigns nor asks for time, nor challenges the reasons adduced by the Ordinary, and this within the term allowed by the Ordinary, the latter can proceed as against the irremovable pastor described in c. 2149. But if the pastor within the term assigned for answering, rejects the invitation to resign, he must do this in writing and state his reasons for refusal to resign, and these reasons the Ordinary, if he intends to proceed validly, must weigh with the aid of two synodal examiners (c. 2159).

If, after hearing the advice of the examiners, the Ordinary judges that the reasons advanced by the pastor are not legitimate,

he shall repeat his paternal warnings to the pastor adding a threat of removal in the event that the pastor does not spontaneously resign the paush within a reasonably predetermined time (c. 2160).

When this term has lapsed, which the Ordinary may extend according to his prudent judgment, the Ordinary shall issue the decree of removal. Provision shall be made for the resigning, or the removed pastor in accordance with c. 2154-2156 (c.2161).

ART. IV

Transfer of Pastors

If the common good requires that a pastor be transferred to another parish from the present parish which he governs with success, the Ordinary shall propose the transfer to the pastor and persuade him to consent to the transfer for the love of God and the good of souls (c. 2162). It should be noted that there is no occasion for *removal* when a pastor governs his parish with good results, and if no cause as listed in c. 2147 can be brought forward against him. The only course then open to the Ordinary who wishes to provide for a parish *ad quam* which could make good use of the pastor in question is for the Ordinary to *transfer* the pastor.

'l'hc Ordinary cannot *transfer* an *irremovable* pastor against his will without special faculties obtained from the Holy Sec (c. 2163, §1). It is supposed, we repeat, that there is no reason justifying removal in the strict technical sense.

But a removable pastor can be transferred even against his wishes if the parish to which he is to be transferred is not of too inferior a rank, and provided the rulings of the following canons are observed (c. 2163, §2).

If the pastor does not accede to the advice and persuasion of the Ordinary, he shall explain his reasons in writing (c. 2164).

If notwithstanding the objections raised by the pastor, e. g., ill health, advanced age, etc., the Ordinary judges that he should not recede from his original plan to transfer the pastor, he must, in order to act validly, hear the opinion of two parish priest consultors on those objections, and together with them he must weigh the circumstances in which the parish *ad quam* and the parish *a qua* find themselves, as also the reasons which convince him of the utility or necessity of the transfer (c. 2165).

If, after having heard the parish priest consultors, the Ordinary deems that the transfer should take place, he shall repeat his

fatherly warnings to the pastor that he accede to the will of his superior (c^2166).

Having done this, if the pastor still refuses, and the Ordinary still insists that the transfer be made, he shall command the pastor to betake himself to the new parish within a specified time, adding to this command a notice to the effect that after the prescribed interval the parish which the pastor now has will become *ipso facto* vacant. Upon the lapse of this fixed term the Ordinary shall declare the parish vacant (c. 2167).

Chapter II

EXTRAJUDICIAL PUNISHMENT OF CERTAIN OFFENSES

Offenses spoken of at this place arc: 1) non-residence; 2) concubinage; 3) neglect of pastoral duties.

Let it be recalled here that the general formalities described in Art. I of the preceding chapter find equal application in the processes to follow, e. g., as regards the need of a notary, the oath of secrecy to be taken by the notary, the examiners and consultors, the manner of administering the warnings, the right of recourse, etc.

ART. I

Punishment of Non-Residence

In the case of a pastor, canon, or any other cleric who fails to observe the law of residence to which he is held by reason of a benefice, the Ordinary shall warn him, and in the meantime, if there is question of a pastor, he shall make provision at the pastor's expense lest the welfare of souls suffer detriment. When issuing the warning, the Ordinary shall recall the penalties which non-resident clerics incur, especially as contained in c. 188, n. 8 where the law considers non-compliance with the warning after a month as equivalent to tacit resignation of the benefice, and he shall intimate to the cleric that he must resume residence within the time determined by the Ordinary in the warning (c. 2168).

If within the time specified the cleric neither takes up his residence, nor offers reasons for his absence, the Ordinary shall declare the parish or non-parochial benefice vacant, provided he has ascertained for certain that the warning reached the cleric and that the latter was not legitimately impeded from answering, as explained above (c. 2169).

If the cleric resumes his residence, the Ordinary is not only bound to deprive him of his salary in proportion to the length of his illegitimate absence, but he may also punish him with other penalties proportionate to his guilt, if the case warrants this (c. 2170).

If the cleric does not return but offers reasons for his absence, the Ordinary taking counsel with two synodal examiners, and making opportune investigations if necessary, shall consider whether the reasons for absence arc lawful (c. 2171).

If, after having heard the examiners, the Ordinary judges that the reasons for the absence are not legitimate excuses, he shall again specify a time within which the cleric must return, depriving him in the meantime of his salary *pro rata absentiae* (c. 2172).

If a *removable* pastor fails to take up residence within the determined period the Ordinary shall at once proceed to deprive him of his parish; if he returns, the Ordinary shall give him a precept not to leave again without his written permission under penalty of *ipso facto* privation of his parish (c. 2173).

In the case of a cleric who has an *irremovable* benefice, and dees not return but offers new excuses a second time for his absence, the Ordinary shall weigh these additional excuses with the examiners as explained in c. 2171. If neither these excuses are considered legitimate, the Ordinary, without taking anything further into consideration, shall command the cleric to return within the time already specified, or now to be specified anew, and this under penalty of *ipso facto* privation of his benefice. If then he does not return, the Ordinary shall declare him deprived of his benefice; but if he returns, the Ordinary shall order him not to leave again without his written permission under penalty of *ipso facto* privation of his benefice (c. 2174).

In neither case shall the Ordinary, in consultation with the examiners, declare a benefice vacant unless, in addition to weighing the excuses for absence alleged by the cleric, he shall have made certain that the cleric could have obtained his written permission to leave had he so desired (c. 2175).

ART. II

Punishment of Concubinage

In the case of a cleric who, contrary to the ruling of c. 133 keeps in his house or in any manner regularly associates with a suspect woman, the Ordinary shall warn him to dismiss her, or to cease his visits, as the case may be; and he shall add to his warning a threat of the penalties established by the law against clerics guilty of concubinage, as contained in c. 2359 (c. 2176).

If the cleric neither obeys the command, nor answers by offering

an explanation, the Ordinary, after having made certain that the cleric could either obey or answer, shall: 1) suspend him *a divinis;* 2) deprive a pastor moreover of his parish at once; 3) proceed further against a cleric who has a non-parochial benefice, and who has now been suspended *a divinis,* by depriving him of half his income at the end of two months from the date of the suspension supposing the cleric has not amended, and by depriving him of his whole income after three more months of unrepentance, and of the benefice itself after another three months (c. 2177).

If the cleric, who does not obey, at least offers reasons of excuse, the Ordinary shall hear the opinion of two synodal examiners on the excuses offered (c. 2178).

If, after having consulted with the examiners, the Ordinary concludes that the reasons are not lawful, he shall inform the cleric as soon as possible of this, his decision, at the same time giving him a formal precept to comply within a short time as specified by himself (c. 2179).

In the case of a removable pastor who refuses to obey, the Ordinary can at once proceed against him with the penalties described in c. 2177 above; but if the cleric who refuses to obey after a second warning has an irremovable benefice, he may offer new excuses, and the Ordinarjr shall examine them in consultation with the synodal examiners. And if these new reasons arc likewise rejected as insufficient, the Ordinary shall warn the cleric to obey within a reasonable time, and after the lapse of this time he shall proceed against the disobedient cleric by means of the penalties described in c. 2177 above (c. 2180, 2181).

ART. III

Punishment of Pastoral Negligence

In the case of a pastor who grossly neglects or violates pastoral duties in respect to the points to be mentioned, the bishop shall give him a warning, recalling to his mind both the strict obligation of conscience involved in the case, and the penalties established by the law for the offenses in question. The pastoral duties intended at this place are: 1) to conduct divine sendees, to administer the sacraments, to become acquainted with his parishioners, to correct the erring, to care for the needy, and to instruct the children (c. 467, §1) ; 2) to visit the sick and the dying, and to administer to them the sacraments (c. 468, §1) ; 3) to see that the church is kept clean

and neat, and free from transactions alien to its sacred purpose (c. 1178); 4) to give catechetical instructions to the children, and to preach, especially by way of a homily, to the people on Sundays and holydays of obligation (c. 1330-1332, 1344). Cfr. c. 2182 where references to these duties are made.

If the pastor does not reform, the bishop shall rebuke him and punish him otherwise with a befitting penalty in proportion to his guilt; and this he shall do when, after having conferred with two synodal examiners, and after having given the pastor an opportunity to explain himself, he shall have concluded that sufficient proof is at hand both to the effect that the aforesaid pastoral duties have been neglected time and again in serious matters, and that the omissions or violations cannot be excused on any lawful pretext (c. 2183).

If both the rebuke and the penalty prove unavailing, the Ordinary, after satisfying himself in accordance with the procedure of the preceding canon that gross neglect and violation of pastoral duties continues, and that it is culpable on the part of the pastor, shall at once deprive a removable pastor of his parish. But in the case of an irremovable pastor who thus continues to neglect his office after being warned, rebuked and punished, the Ordinary shall issue another warning, and when this has proved futile according to the procedure of c. 2183, the Ordinary shall deprive him of his parish (c. 2184-2185).

ART. IV

Suspension ex Informata Conscientia

Prior to the Council of Trent no cleric could be denied promotion to higher orders, unless the superior had first proved by way of a formal trial that the candidate labored under some irregularity. Neither could the cleric be suspended from office, or from the exercise of orders already received save by way of a criminal trial. This led to countless abuses. Families anxious to sec one of their sons enjoy the security, wealth and influence which sacred ordination offered in those days found little difficulty in bribing an unscrupulous ecclesiastical judge to render a favorable sentence in case the fitness of their son was questioned and challenged by the bishop. Again, richly beneficcd clerics living in concubinage, or guilty of other offenses to the great scandal of the faithful, could not be suspended from benefice save by way of a formal

trial; whereas avaricious judges and mercenary witnesses could easily be found willing to betray their sacred trust and honor. To counteract these evils the Council of Trent permitted bishops and regular prelates to forbid their subjects the right to ascend to higher orders, or to exercise orders already received, if the superiors had ascertained only extrajudicially the cleric's unfitness in the one case, or his criminal offense in the other.

At the present day suspension *ex informata conscientia* is a penalty only. It cannot be used as an administrative measure to debar a cleric from higher orders. Clerics can still be forbidden to receive higher orders, and this extrajudicially, but the prohibition is no longer suspension, because not a penalty (c. 2222, §2).

Suspension *ex informata conscientia* simply means that, as the term denotes, the superior's conscience is informed concerning the commission of an offense, and the guilt of the offender, even though this information was obtained extrajudicially. It does not mean that the superior alone knows of the offense. It does not even imply that the suspended cleric is unaware of the reasons for the suspension. In fact, the superior is allowed to disclose the reasons to him, but need not (c. 2193).

Between ordinary suspension and suspension *ex informata conscientia* we find several differences.

1) It is not certain whether the ordinary suspension can be inflicted as a vindictive penalty outside of a trial (cfr. p. 617). If that can be done either in virtue of c. 1933, S4, or c. 2222, §1, then suspension *ex informata conscientia* has quiet outlived its usefulness.

2) The suspension *ex informata conscientia* is always a vindictive penalty; ordinary suspensions can be censures (cfr. p. 688).

3) Suspension *ex informata conscientia* suspends only from *office,* i. e., from the jurisdiction attached thereto, not from *orders* (c. 2186).

4) The most striking difference is that suspension *ex informata conscientia* can be inflicted without the superior needing to threaten it beforehand by way of a precept, for the Ordinary need not indicate the reasons for the suspension (c. 2193).

We said that the Ordinary need not indicate the reasons for the suspension, and we should add to *the suspended cleric himself.* But the latter has the right of recourse to the Holy See, and if he should take recourse, the Ordinary must forward to Rome the proofs of the committed offense, and the reasons justifying the extraordinary measure of punishment (c. 2194). This being true, the

charges of those who see in this institution an instrument of oppression are automatically answered.

Suspension *ex informata conscientia* is justified if the offense is certain but occult so that a trial is impossible. Or if the offense is public, but a trial is still impossible, for the witnesses cannot be prevailed upon to testify in court, or if civil legislation, or the accused himself, will impede the course of justice in open court (c. 2191). In the 19th century more than one bishop of Italy resorted to this penalty in the case of those of their clerics who publicly advocated the abolition of the temporal power of the Pope.

ON OFFENSES AND PENALTIES

In the introductory part of our manual, when we spoke of the Church as a sovereign society, we saw that by reason of that sovereignty the Church has the authority from her divine Founder not only to issue true commands in the form of laws binding in conscience, but that she likewise possesses coercive power with which to enforce her legislation and commands. This was proved not only from Sacred Scripture, but from the practise of the Apostles and of the early Church as well. And reason itself supports this coercive right and power in every lawmaking body. For laws would be idle if their violation involved no punishment.

It is true that the primary mission of the Church must be the salvation of souls, that she ought to heal rather than bruise, and that her most powerful weapon will always be found in the influence she exercises directly over the minds of men by employing what is known as moral suasion.

But from the earliest times the bishops of the Church must have realized that situations could arise where moral suasion alone would not prove adequate to maintain peace and harmony in the Christian communities. Time and again direct appeal to the conscience of the delinquent was undoubtedly employed without success. Had there been question of occult offenses, or of public offenses even, but which harmed the offender more than the community, the pastors in the Church might have felt that they had done their duty simply by warning and reprimanding the offender, and for the rest leaving his fate in the hands of the divine judge.

Situations where moral suasion must have proved futile from the start can easily be imagined, and where, if the bishops had not resorted to more severe measures, the Christian society would soon have ceased to exist as a peaceful united body of believers. Obviously, therefore, the bishops must have convinced themselves from the very beginning that they could and should proceed with penalties in the strict sense of the word against those who taught heretical doctrine, and threatened thereby to rend apart the seamless garment of Christ, which is the Church. Moral suasion must have proved a weak instrument, c. g., against those who obstinately persisted in fomenting schism within the Christian communities, against those, i. e., who preached disobedience to the lawfully constituted authorities. Or, suppose a cleric had succeeded, e. g., with the help of the civil authorities, in ejecting a lawfully appointed office holder, let us say a bishop, and intruding and taking possession of that office himself, would the church authorities have to stand idly by, or strive at the most to restore order by appealing only to the conscience of the intruder? If such were the case, then any obstinate intruder into an office would leave the Christian community perplexed and divided as to whom they ought to show loyalty and obedience, the present or the former incumbent, and this again would lead to new schisms.

The examples here taken at random suffice to illustrate how impossible it would be to govern even a spiritual society by moral suasion alone. In addition to this argument taken from natural reason, as it were, we have the further truth that the Christian Church was established as a sovereign society. Now every such society has the right to defend itself against unjust aggressors, and to repel force with force. How this coercive force is as a matter of fact used today in the Church, and what rules govern its lawful exercise is the object of our present study.

We shall in three chapters consider: 1) offenses in general; 2) penalties in general; 3) particular offenses and penalties.

Chapter I

OFFENSES IN GENERAL

This chapter will discuss in separate articles: 1) the nature of an ecclesiastical offense; 2) how offenses are classified; 3) the principles of criminal imputability; 4) attempted and frustrated crimes or offenses.

ART. I

Nature of an Offense

The present fifth Book of the Code under consideration is entitled: *De Delictis et Poenis.* We may translate the word *delictum* by using any of several English equivalents, such as offense, crime, misdemeaner, delict, delinquency, etc., just so long as we understand throughout when employing any such words the same thing the Code means by a *delictum*. Unlike civil law whose violations are graded according to the gravity of the sanctions attached, and are designated by the above specific names, canon law has but one name for all violations of the law.

By *delictum* c. 2195 understands *an external and morally imputable violation of a law or precept to which a canonical sanction, whether determinate or indeterminate, has been attached.*

This definition contains four essentials of an ecclesiastical offense: 1) there must have been a violation of a law or precept; 2) the transgression must have been external; 3) it must have been morally imputable to the agent; 4) the law or precept must have carried a penalty.

First, there must have been a *transgression,* i. c., disobedience to a command. And since the command must have been conveyed through a law or canonical precept, it follows that only the commands of superiors with external jurisdiction in the Church can give rise to an offense in the event of their violation. Moreover, so-called attempted and frustrated crimes or offenses are not *delicta* in the strict sense of the word since there is here no *actual* violation.

Secondly, the transgression must have been *external.* The desire to transgress the law or precept, while possibly an internal sin, is not an ecclesiastical offense. The Church in the external forum does not, and cannot, punish mere sins of thought and desire, for there is no way to prove their commission, nor can such sins possibly disturb the public and social order of the Christian community. They can be judged only in the internal forum because there the penitent is his own accuser and witness.

Thirdly, the transgression must have been morally *imputable.* In other words, the delinquent must have violated the law or precept knowingly and willingly. In a separate article wc shall sec more fully what imputability imports.

Fourthly, the law or precept must have threatened a *penalty.* Sometimes the law or precept contains a specific penalty, e. g., suspension, excommunication, privation of office, etc. At other times the penalty is threatened without its nature being determined, as where the law would contain the clause: *secus congruis poenis puniatur,* or, *pro qualitate, pro gravitate delicti justa poena plectatur,* etc. In a case of this kind the application of the penalty may he mandatory, although the kind of penalty is optional.

Without this fourth element there can be no *delictum.* Neglect of the Easter duty may be a grave sin, but since the common law establishes no penalty in this case, omission of the Easter duty is not an ecclesiastical offense. The Church punishes no violation unless punishment has been threatened, and the command has been disobeyed nevertheless. For in this latter supposition we seem to find obstinacy and defiance in the offender. However, c. 2222, §1 seems to be an exception to this general rule for there the superior can mete out punishment even though no penal law, or penal precept, had preceded.

ART. II

Offenses Classified

By reason of *object* we can have offenses against faith, religion, authority, life, liberty, property, reputation, good morals; also crimes of falsehood and forgery, maladministration and reception *of* the sacraments, simoniacal conferment and acceptance of ecclesiastical offices, abuse of office, etc. When treating offenses in particular, the Code in Part III of the present Book follows this classification.

By reason of *forum* an offense may violate only ecclesiastical law, or only civil law, or both. Violations of the civil law the Church

does not judge saving only to the extent that sin may be involved. Or again, where clerics and others who enjoy the privilege of the church forum transgress the penal civil law. Because of this privilege, not the civil court but the church court is competent to judge in the case of clerics who disobey the secular law. Mixed crimes are subject to the judgment of both authorities, e. g., abortion. However, c. 1933, §3 advises the ecclesiastical judge to withhold criminal action if the secular court has already prosecuted the offense in the case of a layman (cfr. c. 2198).

3) By reason of *publicity* we have occult, public and notorious crimes. An *occult* crime is one which is not public. A *public* offense is one which is divulged, or one which has been committed under such circumstances that a prudent person must conclude that it will soon become divulged. No hard and fast rule can be laid down here to distinguish public from occult offenses. Some authors hold that knowledge of the delinquency to six persons in a small town, and to a correspondingly larger number in a correspondingly larger locality constitutes a public offense, although a smaller number of persons suffices if they are loquacious. Probably D'Annibale *(Summa Theologiae Moralis,* I, n. 242, note 49) lays down the best rule when he says: *Quia res facti est, in aestimatione boni viri esse debet.* A *notorious* offense is one which is public both as to its commission, its author and its subjective imputability. If the crime is public only in the sense that its commission is known and also its author, but it is not established that the delinquent is subjectively guilty of sin, e. g., he may be excused by reason of ignorance, grave fear, etc., the offense is merely public, not notorious. Certainty concerning imputability may result from the judicial confession of the accused, or from the sentence of the ecclesiastical court, and then the offense is notorious by *notoriety of law,* or the certainty may be gathered from circumstances if they are such that no one can excuse the delinquent under any pretext which the law can offer, be this ignorance, grave fear, etc.; e.g., public enrollment in a non-Catholic sect, and in such cases the offense is notorious by *notoriety of fact* (c. 2197). The distinction between occult, public and notorious offenses is of practical importance in the observance and remission of penalties.

ART. 111

Principles of Imputability

We said that to have a delinquency there must be moral imputability, i. e., the law or precept must have been disobeyed with full knowledge and consent.

In the present article we shall consider the principles which determine the presence of imputability, and the circumstances which lessen or aggravate it. They will serve mostly as norms for those superiors whose penal precepts arc disobeyed. Criminal trials arc rare, but if they occur judges will also apply these norms. They may be of assistance also to confessors to determine whether the penitent has contracted a *latae sententiae* penalty, although additional rules for such cases arc found in c. 2229.

§1. General Norms of Imputability

Imputability may arise: 1) from malice; 2) culpable ignorance short of malice; 3) negligence, short of malice and culpable ignorance (c. 2199). Hence, whatever lessens or increases malice, or negligence, or culpability in ignorance, will at the same time lessen or increase imputability (c. 2199).

By malice *{dolus)* we understand the deliberate will to break the law so that any lack of knowledge on the part of the intellect, or lack of liberty on the part of the will, is opposed to malice. But once the law or precept has been violated, malice is presumed, and it devolves upon the accused to prove its absence; it is not the duty of the superior to prove malice in the accused (c. 2200).

If one breaks the law, being inculpably ignorant of the existence of the law, there is no imputability; otherwise imputability is lessened only in proportion to the culpability of one's ignorance. Ignorance of the penalty only, lessens but does not destroy imputability entirely. The principles here stated apply also to inadvertance and error (c. 2202).

If a person violates the law by the omission of due care and diligence, his imputability is lessened according to the principles to be determined by the judge. If the person foresaw the evil consequences of his negligence, e. g., failure to guard the tabernacle key, and nevertheless failed to use those precautions which the average diligent person would have employed, his fault approaches the degree of malice (c. 2203).

§2. Causes Which Destroy, Lessen or Increase Imputability

Infant age and insanity—Those who actually lack the use of reason arc incapable of crime (c. 2201. §1). To this class presumably belong all persons under the age of seven, and all persons who, though habitually enjoying the use of reason, arc momentarily deprived of reason through grave fear, passion etc. The habitually insane are presumed incapable of crime even though they have lucid

intervals, and appear sane in certain lines of thought and action (c. 2201, §2). Mental debility lessens but does not exclude imputability (c. 2201, §4).

Drunkenness and other states of mental stupor—A. delinquency committed in the state of voluntary intoxication is not entirely free of imputability, but the imputability is less than if the same crime were committed by one in the full possession of his faculties, save where one became drunk purposely to gain courage to commit the offense, or to plead inculpability. Where a law is transgressed in the state of involuntary intoxication, imputability must he considered absent altogether if drunkenness entirely deprived the person of the use of reason; if the use of reason was not entirely absent, imputability is only lessened. The same principles apply to similar disturbances of the mind, e. g., stupor caused by drugs (c. 2201, £3).

Accident—An accident which could not he foreseen, or which if foreseen could not be avoided, excuses from all imputability (c. 2203, §2).

Minor age—Minor age lessens imputability in proportion to the proximity to infancy, unless the contrary is evident, e. g., in the case of a precocious child (c. 2204). Much is left to the discretion of the judge, or superior.

Physical force—This excludes all imputability if it left one completely powerless to resist the force (c. 2205, SI).

Fear—Fear, i. e., *moral* force, produced through threats, or other causes, excuses from all guilt, whether the fear is absolute or only relative. But only *grave* fear will so excuse (cfr. p. 134 concerning what is meant by grave fear). Thus in times of persecution fear of arrest would excuse a cleric from wearing the ecclesiastical garb. But if the fear motivates an act which is intrinsically wrong (violation of the divine, not ecclesiastical, law), e.g., regular attendance at non-Catholic services for fear of losing one's clients in business, or if the act involves contempt of faith or of ecclesiastical authority, e. g., where through human respect, i. e., fear of ridicule alone, one violates Friday abstinence, or where an act involves harm to souls, as when in time *of* a pestilence a pastor neglects the law of residence, in these cases imputability is only diminished, but not totally excluded (c. 2205, §2,3). But grave fear excuses from *censures* though the offense be intrinsically wrong (cfr. p. 681).

Necessity and grave inconvenience—These causes excuse from imputability to the same extent and within the same limits as grave fear described in the preceding paragraph (c. 2205, 82). Necessity differs from grave inconvenience in that the former supposes a conflict of two laws both of which cannot be observed simultaneously,

as where one omits Sunday Mass to remain at home and care for a sick member of the family; whereas the latter supposes the conflict of the law with one's interests, as where a man must omit Sunday Mass by reason of his employment otherwise he would risk losing his position.

Self-defense and provocation—Legitimate self defense against an unjust aggressor excuses from all imputability, provided one took only those measures which were absolutely necessary to defend himself (or his liberty, property, etc.). If those bounds were exceeded, imputability is only lessened. Likewise when one acts upon provocation, e. g., provoked to a duel, this excuses somewhat, but not entirely, a violation of the law. In all such cases it belongs to the judge or superior in the external forum, and to the confessor in the sacramental forum, to determine the degree of culpability (cfr. c. 2205, §4).

Passion and *impulse*—Where these arise from emotions (anger, envy, lust, etc.) so powerful as to momentarily deprive the agent of the free use of reason they excuse from all imputability. Where they only partially disturb the mental processes, they will correspondingly merely lessen responsibility. If they are not antecedent to the act, but subsequent, from freely having worked oneself up to a pitch c. g. by conscious brooding over one's injury, the passion which then follows and motivates a violation of the law rather increases culpability (c. 2206).

Abuse of office—If one breaks the law by the betrayal of his authority or office, his responsibility is aggravated. For this reason sacramental solicitation is so severely punished in canon law. imputability is likewise increased in proportion to the dignity of the offending or offended person. Thus, canon law punishes more severely assaults upon prelates than assaults upon the lower clergy (c.2207).

Repeated offenses—Those who commit the same offenses *(recidivi),* or even different kinds of offenses, increase their responsibility· and deserve to be punished more severely. Hence, while a mere penance may be appropriate in the beginning, more severe punishment should be meted out in proportion as misconduct continues (cfr. c. 2208).

Complicity—To determine the degree of imputability in the case of cooperation, c. 2209 distinguishes between principals and accessories.

1) *Principals*—The following are considered principals and as being equally liable: a) those who cooperate in the commission of the deed as a result of common conspiracy' (c. 2209, §1); b) those

who commit a crime which by its very nature requires an accomplice, e. g., adultery, a duel, etc. (c. 2209, §2) ; c) agents whose cooperation was necessary, even though they acted in the name of a principal, as in the case of abduction (c. 2209, §3).

2) *Accessories*— Generally, accessories do not incur the same degree of guilt as principals, and sometimes they can disclaim all responsibility. In the class of accessories the Code places: a) those whose cooperation was not necessary but merely facilitated the misdeed, provided there was no previous conspiracv (c. 2209. $4) ; b) those who partially withdraw prior to the misdeed, e. g., if the druggist in selling the medicine for abortion advises against its use (c. 2209, §5); c) those who cooperate negatively by neglecting to discharge their duty, e. g., officers of the law who do not interfere with a duel (c. 2209, §6); d) accessories after the deed, i.e., those who had planned beforehand with the delinquent to shelter him, to share in the spoils, etc. But in the absence of a prior mutual understanding such subsequent acts involve no guilt, unless they are expressly punished as offenses in themselves, c. g., permitting a suspended priest after he has been condemned to suspension to celebrate Mass (c. 2209, §7).

All principals as described above in (1) are held to restitution and indemnification *in solidum,* even though the judge condemned each *pro rata.* Hence, the conscientious will have to supply in default of the less scrupulous who happen to ignore the sentence of the court, especially the sentence of the ecclesiastical court whose execution, unlike secular court sentences, must often be left to the conscience of the individual (c. 2211).

ART. IV

Attempted Offenses

When all preparations have been made to commit a crime, but the deed is not consummated either because one desists from his proposal, or because the means have been found inadequate, or because a third party intervenes, wc have an attempted crime, which is more specifically designated a frustrated crime if the deed was prevented through the agency of another (c. 2212).

When the law establishes a penalty for a certain offense, the penalty is not incurred unless the delinquency is perfect in the strict sense of the law, even though one remains guilty of the sin of desire *in foro conscientiae* (c. 2228). Thus, e.g., one who has

recourse to the lay court to prevent the exercise of ecclesiastical jurisdiction does not incur the excommunication of c. 2334 if the recourse was not effective (Code Comm. July 25, 1926; *Acta* XVIII, 394). But in some cases an attempted crime is punished with a penalty of its own (c. 2212, §4). Thus attempted suicide is punished (c. 2350, §2), as well as the attempt to bribe court officials (c. 2407).

Chapter II

PENALTIES IN GENERAL

Penalties arc inflicted to correct offenders and to punish offenses. Having considered ecclesiastical offenses in the foregoing chapter, it remains to speak of ecclesiastical penalties, i. c., penal sanctions.

In separate articles we shall consider: 1) the nature of ecclesiastical penalties; 2) the various kinds of such penalties; 3) superiors with punitive powers; 4) the subject of penalties; 5) the interpretation of penalties; 6) the manner of imposing penalties; 7) requisites of a just penalty; 8) redress against penalties; 9) the cessation of penalties.

ART. I

Nature of an Ecclesiastical Penalty

An ecclesiastical penally is the deprivation of some goods or benefits effected and decreed by the lawful ecclesiastical authority for the correction of the delinquent and the punishment of the offense (c. 2215).

First, a penalty is a *deprivation*. Like the ancient Roman State, and modern States with advanced culture, the Church makes punishment consist not so much in the infliction of positive suffering as in the deprivation of goods.

Secondly, it is the deprivation of *goods* or *benefits*. 'I'he Code uses the word *bonum*. This *bonum* is something which the Church conferred or can confer, e. g., the sacraments and sacramentals, the public prayers of the faithful, ecclesiastical jurisdiction, offices, dignities, etc. Temporal goods the Church, too, can withdraw, for although she docs not confer these, she protects them in the sense that she protects and defends all natural rights of man.

Because this element is lacking in remedial penalties and penances, these are not real penalties in the strict sense (cfr. p. 682). It is true that these latter run counter to self-love, they cause some mental pain and they disturb the emotions. But they withdraw no possessions, no spiritual goods, no temporal goods, or rights thereto,

as we shall see. They do not even impair one's good name, for they have no place unless one is either risking his good name by his present conduct and in the judgment of serious-minded Catholics, or has lost his good name through his misdeeds.

Thirdly, it is a deprivation decreed by *ecclesiastical authority.* If spiritual goods alone were withdrawn, we would have no need to add this third element. But if temporal goods are withdrawn, whether the penalty is ecclesiastical or civil can be judged only by the authority who imposes it.

Fourthly, it is a deprivation intended for the *correction of the offender and the punishment of the offense.* This two-fold object the Church keeps in mind in every punishment. However, some penalties aim primarily at the correction of the offender, such as censures, and others primarily at the suppression of the misdeed and the repair of scandal, such as vindictive penalties, as we shall see.

Sometimes an administrative act of the superior can work a great hardship for the subject, and the act is not punitive in nature, e. g., the removal of a pastor because of sickness, old age, etc., i. e., for administrative, not penal, reasons. Here there is no penalty because the fourth clement is lacking.

ART. II

Division of Penalties

Ecclesiastical penalties are cither: 1) spiritual or temporal; 2) determinate or indeterminate; 3) *latae sententiae* or *ferendae sententiae;* 4) *a jure* or *ab homine;* 5) remedial, medicinal or vindictive.

These divisions often overlap, and do not necessarily exclude one another. Thus, the same censure may be either *latae* or *ferendae sententiae,* cither *a jure* or *ab homine,* and the same applies to vindictive penalties.

§1. Spiritual and Temporal Penalties

According to whether the goods of which a delinquent is deprived are spiritual or temporal (material) goods, we have spiritual and temporal penalties in the Church. The majority of ecclesiastical penalties at the present day arc spiritual in character, c. g., exclusion from the sacraments and sacramentals, denial of Christian burial, denial of active and passive voice (vote) in ecclesiastical elec-

tions, privation of office or benefice, clerical suspension from office, jurisdiction, benefice, etc. That the Church has the right to inflict temporal punishment (not to be confused with positive bodily punishment) is evident from her nature as a sovereign society. As such she has the right to all means necessary or useful to attain her end. But since her members are composite creatures, i. e., with soul and body, temporal penalties are sometimes found more effective than spiritual ones. On the other hand, due to separation of Church and State which obtains almost universally today, the Church in practice refrains from employing penalties which might cause civil lawsuits. Among the temporal penalties still retained by the Code are: 1) money fines; 2) confinement to a monastery; 3) the prohibition to stay in a certain locality; 4) the command to remain in a certain locality; 5) infamy. In the first case we have a privation of material possessions, in the second, third and fourth case a privation of liberty, in the fifth case a privation of honor, or reputation. Temporal penalties in practice arc imposed only on clerics and religious, not on the laity.

§2. Determinate and Indeterminate Penalties

By reason of specification, penalties are determinate and indeterminate. A determinate penalty is one which is so clearly fixed by law or precept that all choice in the matter is excluded, e. g., if the law says: *suspendatur, officio deprivatur, ipso facto incurrit excommunicationem,* etc. An indeterminate penalty is one which the law leaves to the judge or the superior to specify, and this is true whether the law makes it mandatory or optional that a penalty be inflicted, e.g., (in the first supposition of a mandatory punishment) *pro gravitate culpae puniatur,* and (where the infliction of a penalty is optional) *prudenti Ordinarii arbitrio puniatur,* (cfr. c. 2217, §1, n. 1).

The division of penalties into determinate and indeterminate penalties gives rise to the following principles:

1) In the case of determinate penalties established by law the judge as a rule may not increase the penalty (c. 2223, §1). However, he may temper the penalty if extenuating circumstances so warrant (c. 2223, §2, 3, n. 3).

2) In the case of indeterminate penalties the judge must see that the punishment fits the crime, and he should be neither too lenient nor too severe in choosing the proper penalty. He must, therefore, take into consideration various factors which we have seen may increase or lessen imputability ; the amount of scandal given

and harm done, the gravity of the law which has been violated, the age, sex, and mental state of the delinquent, the time and place of the offense, whether the delinquent has repented, etc. (c. 2218, §D.

3) In the case of preceptive or mandator}' penalties, whether determinate or indeterminate, a penalty must ordinarily be imposed, but the judge may postpone the execution of his sentence if grave harm would result from its immediate execution, or he may withhold judgment, and abstain from a criminal trial entirely if the delinquent has repented and repaired scandal, or it is foreseen that he will be punished sufficiently by the civil authorities, or if there is question of vindictive penalties, the judge may, after having passed sentence, suspend the execution thereof in the case of first offenders, and place the delinquent on a three years* parole as described in c. 2288 (cfr. c. 2223, §3, η. 1, 2).

4) If the law establishes a penalty, whether determinate or indeterminate, as optional, it is left to the prudence and conscience of the judge to inflict it or not (c. 2223, §2).

Thus far we have been considering the principles applicable to determinate or indeterminate penalties when these arc *ferendae sententiae.* If the penalty is *latae sententiae* (cfr. *infra),* is is necessarily a determinate and preceptive one, and so the judge can neither increase nor reduce it. But it is generally left to the prudence of the superior to issue, or authorize the issuance of, the declaratory sentence (c. 2223, §4).

In practice, trials arc seldom held at the present day, and since many of the foregoing principles apply only when the judge proceeds by way of a formal trial, they have little value.

§3. Penalties *latae sententiae* and *ferendae sententiae*

Depending on the manner in which they are incurred penalties are *latae* or *ferendae sententiae.*

A penalty *latae sententiae* (of a sentence already pronounced) is a determinate penalty which is so attached to the law, or the superior's precept, that it is incurred immediately upon the commission of the offense, as if the sentence were already passed *(latae sententiae).* A penalty *ferendae sententiae* (of a sentence to be passed) is one which, whether determinate or indeterminate, need not be observed in either the internal or external forum before the delinquent has been found guilty and condemned. Both kinds of penalties may also be attached to the superior's precept (c. 2217, §1, n. 2). If attached to the precept of the superior, the penalty can be called

latae or *ferendae sententiae* only in the improper sense, since when the superior actually imposes the penalty upon the delinquent, this is usually done extra-judicially bj way of a *decree,* not by way of a *sentence.*

Civil legislation has no *latae sententiae* penalties. Only the Church can reach man's soul, and in this case make her penalties self-executory. That the exercise of such power is reasonable follows from the fact that the violation of ecclesiastical laws may not prove detrimental to the rights of others, and hence there is no interested party to sue the delinquent in court and punish his offense, as happens where civil laws are transgressed which involve an infringement of the temporal interests of others. As a result many serious offenses which harm Christian society would remain undetected and unpunished did not the Church attach self-executory penalties to these crimes, e. g., the absolution of one's accomplice, the reading of prohibited books, etc. (cfr. Vermeersch-Crcusen, *Epitome Juris Canonici,* III, n. 405).

The division of penalties into *latae* and *ferendae sententiae* penalties gives rise to the following principles:

1) Since *latae sententiae* penalties are always more odious than *ferendae sententiae* penalties, in a case of doubt the penalty must be presumed *ferendae sententiae* (c. 2217, §2). If the lawgiver or the superior uses the expressions: *ipso facto* or *ipso jure (incurritur, incurrenda)* this is evidence that a *latae sententiae* penalty is intended.

2) A *latae sententiae* penalty, whether medicinal or vindictive (cfr. *infra)* is binding on the delinquent in both the internal and external forum immediately upon the commission of the misdeed, provided he is conscious of the penalty. But unless the delinquency is notorious, i. e., not only public, but inexcusable from the point of imputability in the eyes of the public, the delinquent need not observe the penalty in the external forum before he has been found guilt}· and condemned. This applies only when the penalty cannot be observed without defaming oneself prior to official condemnation (c. 2232). Moreover, in the case of *latae sententiae* penalties the superior is generally free to condemn or withhold condemnation even though he is aware of the offense (c. 2223, §4). That canon states two cases where the offender *must* be sentenced.

3) The sentence which imposes a *ferendae sententiae* penalty established by the law is called a *condemnatory* sentence; that which imposes a penalty *latae sententiae* established by the law is called a *declaratory* sentence. Whether cither penalty may be imposed outside of a formal trial is disputed (cfr. p. 617).

4) A *ferendae sententiae* penalty, we said, need not be observed until the delinquent has been judged and found guilty by the court (or the superior) ; and it will be the right of the court, or superior, to determine whether the accused is guilty and to what extent. But in the case of *latae sententiae* penalties which take effect at once, and must be observed at least in the forum of conscience, it will be left to the individual to decide whether or not he has contracted the penalty. To help him form this judgment canon 2229 lays down certain rules which arc peculiar only to the penalties under consideration. Namely :

a) Affected ignorance, i. e., ignorance which has been purposely fostered to escape the consequences of the law, never excuses from any *latae sententiae* penalties.

b) If the law which has been transgressed contains the words: *praesumpserit, ausus fuerit, scienter, studiose, temerarie, consulto egerit,* or similar expressions which postulate full knowledge and deliberation, any diminution of imputability, whether on the part of the intellect or the will, excuses from *latae sententiae* penalties.

c. If those words are not found:

1) Crass or supine ignorance (that which is present because no effort whatever was made to dispel it) docs not excuse. If not crass or supine but still gravely culpable, such ignorance will excuse from medicinal but not from vindictive l.s. penalties. It is immaterial whether ignorance concerned the law, or only the penalty, or both.

2) Drunkenness, the omission of due care, i. e., carelessness, mental debility, and passion will not excuse if in these cases, notwithstanding the lessened imputability, the offense is still gravely culpable.

3) Grave fear docs not excuse from l. s. penalties if the misdeed amounts to a contempt of faith, or of ecclesiastical authority, or if it proves publicly detrimental to souls. Outside of these instances grave fear excuses, even though the offender was guilty of grave sin, and even though the act was intrinsically wrong, i. e., a violation of the divine law (Code Comm., Dec. 30, 1937; *Acta* XXX, 73, Cfr. also *infra* p. 715).

4) Children under the age of puberty arc not liable to l. s. penalties (c. 2230). Bishops arc not subject to l.s. suspension or interdict unless the penal law expressly has them in mind, (c. 2227, §2). Cfr. c.g., c. 2373, n. 1 where a bishop who ordains a non-subject without dimissorial letters incurs *ipso facto* suspension for a year.

§4. Penalties *a jure* and Penalties *ab homine*

By reason of their author penalties are divided into penalties *a jure,* i. c., penalties established by the law, and penalties *ah homine,* i. e.. penalties established by the superior which he attaches to his precept. Either may be l. s. or f. s. But if *ferendae sententiae,* and even though established by the law, it will be considered a penalty *ab homine* after the judge pronounces the condemnatory sentence (c. 2217, §1 n. 3).

The distinction between *a jure* and *ab homine* penalties is important from the viewpoint of their pardon. The law grants extensive faculties, as we shall see, to confessors to absolve from *a jure* penalties. But from *ab homine* penalties seldom can anyone other than the administrative superior who authorized or imposed the penalty grant pardon.

§5. Remedial Penalties, Censures and Vindictive Penalties

By reason of the purpose for which they are imposed penalties are divided into remedial penalties, censures and vindictive penalties.

A. Remedial Penalties

These are not penalties in the strict sense; rather they are remedial measures against the incurring of penalties in the strict sense. They are resorted to by the superior in order to forestall the commission or the repetition of an offense.

They find application chiefly in those cases where an offense consists not so much of one transgression of the law but rather of a series of transgressions. We saw how the Code applied them in the case of religious before their dismissal, and in the case of clerical concubinage, non-residence and neglect of pastoral duties. There, as here, the offense consists somewhat in an habitual mode of conduct contrary to the law.

Remedial penalties are four in number: 1) admonition; 2) rebuke; 3) precept; 4) surveillance (c. 2306).

An *admonition* or warning *(monitio)* is given to one who is in the proximate occasion of committing an offense (c. 2307). The reader need only review the procedure already outlined against the above mentioned offenses to understand this point. Thus, since the law does not state how long an absence will constitute the offense of non-residence, or how many visits are to be interpreted as concubinage, etc. it belongs to the superior when he issues his *monitio* to determine these matters for the offending person, if such determination is in order. Less often is the *monitio* employed against a suspect, although it is allowed (c. 2307).

A *precept* is a command of the superior which accurately indicates just what his subject must do, or refrain from doing, and carries with it a threat of punishment in the event of disobedience (c. 2310). The precept, therefore, differs from the monition in that it gives a command, whereas the monition simply recalls the penalty established by the law against the impending offense in question.

In practise the monition and precept are often administered jointly. This, we saw, happened in the use of these remedial penalties against non-residence and concubinage. Where no procedure is outlined in the law, the superior may follow his own judgment whether to give the monition and precept jointly or separately, or whether to omit the monition entirely.

Both the monition and the precept may be public or secret. As regards the *precept,* there must always be evidence at hand of its having been issued. It may be administered before an ecclesiastical notary, or in the presence of two witnesses, or by means of a registered letter, as we saw in the case of procedure against non-residence, concubinage, and pastoral negligence. A *secret* precept or command (with threat of punishment) can be proved, e.g., by having the offender sign his name to the document after reading it, and preserving the document or the signed copy in the archives (cfr. c. 2309).

As regards the warning *(monitio),* if this can be employed or omitted at the discretion of the superior, no proof of it is required. But if the law demands the monition, as it docs prior to the dismissal of religious, and the penal removal of pastors, then the monition must be given in legal form, either publicly or secretly as described in the preceding paragraph (cfr. c. 2309).

The warning and the precept may be given repeatedly. Usually, however, the precept is given but once. Still, it may happen that if the warning and precept coincide, the reputed offender may offer, or attempt to offer a defense of his present conduct, e. g., why the pastor absents himself and cannot return within the time specified by the Ordinary. Then, as we saw, the Ordinary may, after reconsidering, repeat his warning and precept. How often one can be admonished before being commanded depends on the presence or absence of scandal, and the demands of social justice.

A *rebuke* or reprimand *(correptio)* is proper in the case of a proved transgression as implied in c. 2308. It substitutes for the precept when proceeding against negligent pastors (c. 2183). In many offenses where the accused pleads guilty it dispenses from the need of a criminal trial, and the application of the strict penalty of

the law (c. 1947), provided the offender is willing to accept an appropriate penance to repair for scandal given, and to satisfy any wrongs to third parties he may have caused (c. 1952, 2313, §2).

Surveillance, as a remedial penalty, is resorted to especially if there is question of one who is in danger of relapsing into the same offense (cfr. c. 2311). The Code refers to surveillance also in connection with suspects (c. 1946, §2) ; and with the accused during the course of a criminal trial (c. 1957) ; and with respect to repeated offenders in general (c. 2234).

Remedial penalties, we said, are not ecclesiastical penalties in the strict sense of the word. They withdraw no goods, either spiritual or temporal. They do not even lessen one's good reputation. They suppose censurable conduct, and that sufficient evidence is at hand to prove misconduct. Without this proof even remedial penalties are unjustified. With that proof at hand the offender has already harmed his good name, and the remedial penalty does not defame him more than he has already defamed himself.

It is the desire of the lawgiver as expressed in c. 2214 that bishops and other superiors have frequent recourse to remedial penalties in the case of misconduct. On the one hand, the superior ought not apply the extreme penalty of the law at the first indications of misconduct, but on the other hand he should not wait until a continued line of misconduct has reached the degree that constitutes it an offense deserving of the established penalty. In that canon bishops and other superiors are reminded that they are the shepherds of their flock, that these are their children and brothers in Christ, that they ought first to reprove, rebuke, entreat in all goodness and patience, since benevolence often effects more than severity, admonitions more than threats, charity more than authority; but if punishment must be given, then let justice be tempered with mercy, and harshness with leniency, lest by enforcing Christian discipline with undue rigor, the offender be embittered into hopeless unrepentance.

It should be noted that remedial penalties cannot be employed, save where the law either establishes no penalty for a certain line of misconduct, or carries only a penalty *ferendae sententiae.* They arc no escapes from *latae sententiae* penalties.

B. Medicinal Penalties or Censures

A censure is a penalty which deprives a delinquent and contumacious offender of certain spiritual goods until he repents of his misdeed and receives absolution (c. 2241, §1). *Contumacious* and *until he repents* indicate the nature and purpose of censures as distinct

from vindictive penalties. The main purpose is to reform the delinquent. For that reason they are called medicinal (from *medicina).*

Contumacy means that the censure was threatened by law or precept, and in spite of such warning the offender violated the command, and is still unrepentant (c. 2242, §2).

The offender is considered to have withdrawn from his contumacy when he truly repents of his misdeed, and at the same time satisfies, or promises to satisfy, for any wrong and injury he may have caused, and to repair any scandal he may have given (c. 2242, §3).

No one can be punished with a censure for an offense that does not amount to a mortal sin. And in every case he must have been forewarned, else contumacy is not possible (c. 2242, §1).

As soon as the censured offender repents, i. e., desists from his contumacy as just explained, he has a right to be absolved from the censure, but he may still be punished with some penance, or even a mild vindictive penalty, by the superior or confessor who absolves him, if the case seems to require this (c. 2248, §2).

Since a censure must be lifted as soon as the delinquent repents, it follows that no censure can be inflicted for a fixed period of time, for it may happen that the offender will repent before that time has elapsed, and he would then have a right to be absolved.

So that censures may prove more effective, most *of* them are reserved, i. e., their *absolution* is reserved to the lawgiver, or the superior who issued the precept. If they arc established by law but reserved to no one, then any ordinary confessor can absolve though such reservations are rare. The more grievous the delict the more stringent will be the reservation. Some censures arc reserved by law to the Ordinary, others are reserved to the Holy Sec cither *simpliciter,* or *speciali modo,* or *specialissimo modo.* The Ordinary can absolve from censures reserved by the law to himself. To absolve from censures reserved to the Holy See delegated faculties arc necessary, i. e., simple delegated faculties if the censure is reserved *simpliciter,* special faculties if reserved *speciali modo,* most special faculties if reserved *specialissimo modo.* In practise, however, as we shall see, the law grants very broad absolving faculties to Ordinaries and confessors today, so that offenders need no longer make a journey to Rome as in times past to be absolved, nor need they even wait for absolving powers to be received by letter from Rome.

In spite of all this, however, censures, at least excommunication and interdict, are more severe penalties than arc vindictive penalties: 1) because they deprive the offender, while he is under the censure, of more important spiritual goods, e. g., sacramental absolution, for

one thing; and to the supernatural man this is a greater loss than any other deprivation he could suffer, not excluding the loss of one's clerical rank, i.e., degradation; 2) because before they arc removed the offender must promise to accept a vindictive penalty anyway, e. g., loss of active and passive voice, or a heavy expiatory penance, if these arc deemed necessary to repair for scandal given; 3) because the judge can suspend the infliction of a vindictive penalty established by law in the case of most first offenders (c. 2288).

Until the time of the decretalists in the Middle Ages penal theory and legislation in the Church was rather vague. The word *censure* had a most comprehensive meaning. Any penalty could be called a censure until Innocent III (1195-1216) decreed that henceforth the word should be restricted to excommunication, suspension and interdict. This helped somewhat but not much. The decretalists still had to develop the distinction between medicinal and vindictive penalties. When they succeeded in doing so, they discovered that censures were eminently suited to reform the delinquent and to serve primarily as medicinal measures, and that all other penalties, privation of office, etc., were better qualified to serve as repressive measures or vindictive penalties. For centuries previous to this the lifting of all penalties was governed by the same norms so that all penalties, even excommunication, could be inflicted for a definite number of months or years, nor could the offender immediately upon reform ask that he be absolved, as is clear from the prolonged public penances required before absolution could be granted in either the external forum or the forum of conscience, saving in danger of death.

Censures are of three kinds: 1) excommunication; 2) interdict; 3) suspension.

(1) *Excommunication*

Excommunication is a censure by which a Christian is excluded from communion with the faithful within the limits determined by the law (c. 2257). It is called anathema when inflicted with all the solemnities of the Roman Pontifical *(ibid).*

Some excommunicates are *vitandi* (to be avoided), others arc *tolerati* (tolerated). The latter are deprived only of the *exercise of* spiritual rights, or of the *use* of spiritual goods; the former are deprived of the rights and goods themselves, and the faithful should avoid their company in social life, saving their family and close of kin. No one is an excommunicate to be avoided *(vitandus)* unless this was expressly stated in the papal decree (c. 2258, 2267).

Although excommunication is the severest church penalty because it exiles one from the ecclesiastical society completely until

he reforms, yet it cannot deprive one of his baptismal character, nor of divine grace through perfect contrition, nor of the private prayers of the faithful. Concerning the effects of excommunication in particular, these are listed in c. 2259-2267, the following summary for practical purposes being sufficient:

1) Privation of the sacraments. This is the gravest effect, and in itself it usually suffices to bring about the reform of the delinquent, since until he is absolved from the censure (and he cannot be remitted the penalty until he recedes from his contumacy as stated above) he cannot be absolved from his sins, nor can he receive holy communion or any other sacrament (c. 2260, §1).

2) Privation of Christian burial and all other sacramentals *post sententiam,* i. c., only after the court has passed the declaratory or condemnatory sentence, but not before, even though the crime be public, provided it be not notorious (c. 2260, §2, 81) ;

3) Privation of the right to assist at divine services, although passive attendance may be permitted (c. 2259, 82).

4) Privation of the right to share in the public prayers, suffrages and indulgences of the Church. But the faithful may pray privately for the delinquent, and a priest may privately apply Mass for him (c. 2262) ;

5) Privation of the right to sue in the ecclesiastical court, and to act as sponsor in baptism or confirmation ; but the crime for which excommunication was incurred must be notorious (c. 2263, 2256, n. 2; 765, n. 2; 766, n. 2; 795, n. 2; 1654) ;

6) Clerics who have incurred excommunication are moreover forbidden; a) to celebrate Mass; (c. 2261); 2) to administer the sacraments and sacramentals (c. 2261); 3) to exercise any act of jurisdiction (c. 2264) ; 4) to receive dignities, offices, benefices, pensions and orders (c. 2265). But the faithful are permitted to ask the sacraments and sacramentals from an excommunicated priest who has not been sentenced ; not if he has received court sentence save they be in danger of death (c. 2261, §2, 3). As to acts of jurisdiction, and the acceptance of dignities, benefices, offices and pensions, these acts arc only illicit if placed by an excommunicated cleric *ante sententiam excommunicationis;* they are also invalid *post sententiam* (c. 2264, 2265), save sacramental absolution given by an *excommunicatus* to a penitent in danger of death, which is always valid (c. 2261, §3).

(2) *Interdict*

There are three kinds of interdicts: 1) personal interdicts; 2) the interdict *ab ingressu ecclesiae;* 3) local interdicts. A personal interdict is always a censure, the interdict *ab ingressu ecclesiae* may

be either a censure or a vindictive penalty; local interdicts are always vindictive penalties. Concerning the first two we shall speak at present; concerning local interdicts, cfr. p. 690.

Personal interdict—The personal interdict is merely a limited form of excommunication; it carries some but not all the effects of that censure. One who is personally interdicted is barred within the same limits as an excommunicated person (and hence depending upon whether he acts *ante* or *post sententiam)* from: 1) assistance at, and participation in, divine services; 2) the reception, consecration and administration of the sacraments and sacramentals; 3) the reception of offices, benefices, dignities, pensions and orders; 4) ecclesiastical burial (c. 2275).

Interdict ab ingressu ecclesiae—This penalty prohibits burial, and the right to conduct or assist at ecclesiastical functions, in any church (c. 2277). This penalty is employed by the Code only in three cases: against those who violate cemeteries (c. 2329); those who give Christian burial to persons who by law are deprived of that right (c. 2339); those who perform or permit others to perform divine services in places under local interdict (c. 2338).

The personal interdict and the interdict *ab ingressu ecclesiae* have practically fallen into desuetude at the present day.

(3) *Suspension*

Suspension, may be either a censure or a vindictive penalty. The effects arc the same in cither case, save that if a censure is intended it cannot be imposed for life, or for a fixed period, since it must be removed immediately upon the reform of the offender. This in practice is the test to determine whether suspension decreed by law or precept is intended as a censure or a vindictive penalty. In doubt (because more easily removed) it is presumed a censure (c. 2255, §2).

Suspension is a censure which debars a cleric from his office, or benefice, or both (c. 2278, §1). Unlike excommunication and interdict it never affects laymen but only clerics.

If suspension is established or applied generically, without any qualifying clause, this means suspension from office and benefice, together with all the effects which both suspensions are capable of carrying (c. 2278, §2).

Suspension *ab officio* only, does not entail suspension from benefice. It means that the cleric so suspended may not exercise rights of jurisdiction or of orders, e. g., a pastor could not preach, hear confessions, or administer other sacraments (c. 2279, §1).

Suspension a *beneficio* deprives the cleric of his personal revenues from the benefice, e. g., it deprives a pastor of his salary. It docs not withdraw the right to administer the goods of the benefice unless this is expressly stated, nor the right to exercise his office otherwise (c.2280).

Suspension *ab officio* has divisible effects. Thus, a cleric can be suspended simply *a jurisdictione,* in which case he could say Mass but not hear confessions. Suspension *a divinis,* on the other hand, forbids the exercise of the power of orders but not the exercise of the power of jurisdiction. A regular superior, so suspended, could grant confession faculties, but he could not say Mass. A cleric can be suspended simply from hearing confessions, or from preaching, or from assisting at marriages, etc. But the mitigated and limited forms of suspension must appear clearly from the sentence or decree, else suspension in general will be understood (cfr. c. 2279).

Any cleric who incurs a l. s. suspension can, before the declaratory sentence, administer the sacraments validly and licitly under the conditions found in c. 2284, if the people ask for the sacraments. But a suspension imposed by decree of the superior does not allow such latitude.

C. Vindictive Penalties

These aim directly at the punishment of the offense, not the reform of the offender, and so they can he imposed for a definite period, e.g., a month, etc (.2286). They cease not by absolution as do censures, but by dispensation and expiation (c. 2289).

The vindictive penalties of most frequent use today are: 1) local interdict; 2) interdict *ab ingressu ecclesiae;* 3) penal transfer of a see or parish title; 4) infamy of law; 5) denial of Christian burial; 6) privation of favors, e. g., the privilege of a private oratory, academic titles, etc.; 7) privation of precedence, of active and passive voice (vote), and of honorary titles; 8) fines; 9) the prohibition to exercise the sacred ministry save in a certain church; 10) suspension of definite duration ; 11) penal transfer from a benefice or office to an inferior one; 12) disqualification for all or certain dignities, offices and benefices; 13) privation of office or benefice; 14) confinement or reclusion in a certain place or territory; 15) exile from a certain place or territory; 16) temporary privation of the clerical garb; 17) deposition; 18) perpetual privation of the clerical garh; 19) degradation (cfr. c. 2291,2298).

At the present day, in practice, the laity are punished by censures, not by vindictive penalties, if we except denial of Christian burial. Likewise the changed times, including the attitude of civil legislation,

have rendered many of the foregoing penalties obsolete even *for* clerics, e. g., reclusion, exile, etc. It will suflice to consider in detail certain penalties which are more or less technical in their meaning or application.

(1) *Fines*

Fines, whether imposed by common or particular law, must be diverted by local Ordinaries not to the episcopal benefice or the cathedral chapter, but rather to pious causes, provided the law docs not specify otherwise the purposes to which the fines must be devoted (c. 2297). Thus, e.g., c. 2347, n. 2 specifies that the Ordinary shall compel a cleric who has unlawfully alienated the goods of his benefice to restore twice the amount of the damage in favor of his benefice, supposing a damage has resulted from the alienation.

(2) *Local Interdict*

Local interdict is always a vindictive penalty. It directly affects a locality, prohibiting therein all sacred functions, and indirectly deprives all persons of the locality of the right to sacred ministrations (c. 2268).

Local interdict may be general, i. e., it may extend to a whole country or diocese, and this only the Holy Sec may decree; or it may be particular, affecting only a parish, an altar, a cemetery, and this the bishop may decree (c. 2269).

No matter what the nature of the local interdict, it is always permitted to administer the sacraments and sacramentels to the dying (c. 2270, §1). And on certain major festivals as specified in c. 2270, §2, the interdict is suspended almost entirely. Otherwise, if the interdict is general, the clergy may conduct sacred functions behind closed doors; and only in the cathedral church, or in the only church of the town, may the sacraments be administered to all, and Christian burial be given (c. 2271). This latter provision usually holds also in the case where a particular interdict was placed upon a parish church, i. e., the sacraments may be administered daily with the low Mass said daily, and funerals may be held without pomp (c. 2272, §3).

Local interdicts have practically fallen into desuetude. In the Middle Ages they were frequently resorted to (especially general interdicts) in order to break the resistance of the civil ruler toward the ecclesiastical authorities on the theory that the citizens themselves (practically all being Catholics) would rise up in just anger and depose their ruler, or make him come to terms with the Church. But those were the ages of faith.

(3) *Suspension*

Suspension, as a censure or vindictive penalty, is employed only against clerics. Except from the point of duration, the effects of suspension as a vindictive penalty are the same as the effects of suspension considered as a censure.

(4) *Disqualification*

Disqualification *(inhabilitas)* is a penalty in virtue of which a cleric is declared unfit for validly receiving an ecclesiastical office, or benefice, or any other clerical position. Only the Holy See can declare by law or decree disqualification in those cases where the common law lays down the requisites for qualification, e. g., a pastorship, the office of ecclesiastical judge, chancellor, etc. But the bishop may decree disqualification for an office not contemplated by common law, e.g., parish trustees (c. 2296, §1). Disqualification does not affect *acquired* dignities, offices, benefices, etc., otherwise it amounts to privation (c. 2296, §2). The Code contains many instances of crimes which involve disqualification, e. g., every excommunicated cleric is automatically punished also with disqualification (c. 2265, §1,n.2).

(5) *Infamy*

Infamy *(infamia)* in itself means loss of reputation or good name. This may result from the operation of law which brands certain offenses with infamy *(infamia juris),* or it may result from the fact that serious minded people have lost their good opinion of a church member due to some misdeed on his part *(infamia facti).*

Legal infamy is a penalty in the strict sense of the word, but it is incurred only in the cases expressly mentioned in the common law, e.g., against obstinate heretics (c. 2314, §1,n. 2), against profanators of the Sacred Species (c. 2320), etc. Infamy of law entails irregularity, disqualification for offices, and dignities, and the prohibition to exercise the sacred ministry (c. 2294, §1). The penalty can be removed only by dispensation of the Holy See (2295).

Infamy *of fact* is an impediment to the reception of orders and the prohibition (not disqualification) to receive ecclesiastical dignities. benefices and offices, and to exercise liritlv the sacred ministry (c. 2294, §2).

(6) *Privation of office or benefice*

Privation of office or benefice is the removal of a cleric from his office or benefice in punishment. If a pastor, e. g.. is removed

for administrative reasons, this is not called privation *(privatio)* but removal *(amotio)*.

Privation of office can be decreed by the law or by the superior. But in the case of irremovable offices a formal trial must be held. In the case of removable offices extrajudicial procedure suffice* (c. 192).

Privation of an irremovable benefice, cannot be resorted to save in the cases expressly provided for in the law; but a cleric can be deprived of a removable benefice for any punishable offense (c. 2299).

A cleric cannot be deprived of a benefice which is his ordination title, unless he has other honest means of a livelihood, and saving where he has been deposed (cfr. *infra*). In the U. S. clerics arc not ordained on the title of benefice, but generally for the service of the diocese. Nevertheless, the local Ordinary is bound in justice to provide for a repentant cleric who has been deprived of his parish, for although the cleric may have lost his right to the particular benefice, he has not necessarily lost his right to a clerical living. He may be given a chaplaincy or an assistant pastorship, etc.

(7) *Deposition*

This penalty is more severe than privation of office. It includes suspension, privation of all offices and benefices which the cleric may have, and disqualification for any future office or benefice. Moreover, the Ordinary is not bound to provide for the cleric's maintenance in justice but only in charity (c. 2303). Deposition can be inflicted only by way of a formal trial conducted by a court of five judges (c. 1576). It can be imposed only for crimes specified in the law, namely, in c. 2314, 2320, 2322, 2328, 2350, 2354. 2359, 2379, 2394, 2401. Λ deposed cleric retains the clerical privileges. Privation, or deposition from a particular office is not the general deposition here contemplated.

(8) *Degradation*

This is the severest of all vindictive penalties. It adds to deposition the perpetual privation of the clerical garb, and of clerical privileges. In other words the cleric is reduced to the lay state, as the term implies, i. e., he is laicized. It is seldom resorted to at the present time in the United States, since clerical privileges have lost much *of* their meaning, due to separation of Church and State. It can be inflicted only in the cases expressly mentioned in common law, i. e., in c. 2314, 2343, 2354, 2368, 2388; likewise if a deposed

cleric continues to give grave scandal for a year (c. 2305). Λ degraded cleric in major orders must observe celibacy (cfr. c. 213, §2).

D. Penances

Penances, like the so-called remedial penalties, fall short of the nature of true ecclesiastical penalties, i. e., of censures and vindictive penalties (cfr. p. 676, 682). Penances, when imposed in the external forum (canonical as distinguished from sacramental penances) are works of mortification which the delinquent freely accepts from the superior in order either to escape a penalty not yet imposed, or to be pardoned a penalty which he has already incurred (c. 2312).

The chief penances employed in the Church at the present day arc:

1) The recitation of certain specified prayers;

2) A pious pilgrimage, or some other work of piety;

3) Fasts not otherwise prescribed by law;

4) The giving of an alms to some pious cause;

5) A spiritual retreat for a number of days, e.g., 10 days, in some pious or religious house (c. 2313).

The foregoing is a typical, not an exhaustive, list of canonical penances. It is left to the discretion of the pardoning authority to determine what kind of penance is best suited for a particular case, taking into consideration not alone the gravity of the offense, but especially the amendment *of* the delinquent, the latter element contributing more to the repair of scandal and the restoration of the disturbed public order in the estimation of the faithful than the heaviest possible penance.

ART. III

Superiors With Punitive Powers

Every lawgiver in the Church may enact (establish) penalties for the violation of his own laws, or those of his predecessor. In fact, he may, in view of particular circumstances sanction with penalties of his own the divine law, and non-penal higher ecclesiastical laws, or aggravate and increase the penalties already attached to the latter (c. 2221).

But the Ordinary cannot add a censure of his own to a penal law which already carries a censure reserved to the Holy See

(c. 2247, §1). Neither may he reserve the absolution of the *sin* in this case to himself (c. 898). But if the censure decreed by common law is *nemini reservata,* the Ordinary may by way of exception reserve the case to himself *ratione peccati* (c. 898). Whether the Ordinary can reserve to himself by episcopal decree a censure already reserved to him by the common law is doubtful (cfr. Eccl. Rev., Feb., July, 1931; Mar. 1932).

Superiors with purely administrative jurisdiction i. e., who cannot make laws but only issue precepts, can nevertheless attach penalties to their precepts, excepting the vicar-general without a special mandate (c. 2220).

The question is disputed among canonists whether local superiors in clerical exempt religions (provided they arc not major superiors as is the local abbot), can attach strictly ecclesiastical penalties to their precepts. On the one hand c. 501, §1 uses general terms when it states that superiors in clerical exempt religions have jurisdiction in respect to their 'subjects, and makes no distinction between major and minor superiors, nor between administrative, judicial or coercive jurisdiction, while c. 2220, §1 also states in general terms that those superiors who can issue precepts may attach penalties thereto. On the other hand, the Code consistently employs the word *Ordinary* (equivalent to major superior) when describing the judicial or extra judicial procedure in the infliction of penalties. If the constitutions expressly empower local superiors to threaten censures and vindictive penalties, then those superiors without doubt have such power. If the constitutions arc silent, their punitive authority is doubtful, beyond the authority of imposing penances only.

Superiors, even major superiors, in lay religions and in clerical non-exempt religions, since they enjoy only dominative or paternal (domestic) authority but not jurisdiction over their subjects, cannot enact penalties in the strict sense of the word, i. e., they cannot deprive their subjects of rights which these have as members or officials in the Church, rights which have been conferred on the subjects by the sovereign authorities in the Church. Hence, they cannot deny them the right to the sacraments or Christian burial, or deprive them of jurisdiction, e. g., withdraw their faculties for hearing confessions, etc. At the most, the religious superior may deprive his subjects of rights which they possess in virtue of membership in their own religious organization, e. g., some office, or the right of active and passive voice, the right of precedence, etc. These will be penances in the canonical language of the Church,

not ecclesiastical penalties. The reason is that no ecclesiastical jurisdiction is lost through such procedure. They may even deny their subjects the exercise of certain natural rights, e. g., that of liberty, by transferring their subjects in punishment, or subjecting them to confinement. These arc not vindictive penalties in the canonical language of the Church, but penances only ; the superior is empowered to proceed to these lengths not in virtue of a participation in the sovereign power as a regular prelate, but merely in virtue of an implied contract between the religious and the religion made at the time of profession, i. e., in virtue of the vow whereby the subject surrenders his rights within the limits defined by the constitutions.

As to the *infliction* of penalties, every superior who can enact penalties can also inflict them, i. e., apply them in the event of a transgression. However, a judge as such can only inflict or apply penalties established by the lawgiver (c. 2220, §1). But in the course of the trial a judge may issue decrees and precepts and enforce the same with his own penalties (c. 1845).

ART. IV

Subject of Ecclesiastical Penalties

The general principle here is that those persons are subject to an ecclesiastical penalty who are bound to the observance of the law or the precept which carries the penalty (c. 2226, §1).

Therefore, all the faithful are subject to the penalties decreed by common law unless some persons are expressly exempted. The following are expressly exempt from all or certain penalties of the common law:

1) Cardinals are exempt from all penalties save where the penal law explicitly mentions cardinals (c. 2227);

2) Bishops are exempt from *latae sententiae* suspensions and interdicts, unless the penal law expressly mentions bishops (c. 2227) ;

3) Children under the age of puberty are exempt from *latae sententiae* censures (c. 2230) ;

4) Orientals, since they arc generally exempt from the laws of the Latin Church, are likewise exempt from the penalties attached to those laws. Still, in view of the exceptional gravity of the crimes in question, Orientals are not exempt from censures reserved to the Holy See *specialissimo modo* (H. Off., July 21, 1934; *Acta* XXVI, 550).

Penalties attached to local laws arc incurred by those only who are subject to the local laws as explained on p. 92. And while a resident contracts the censure attached to the local *law* of his diocese in the event that the law is transgressed while he is in his home diocese, still the *censure* ceases as regards its reservation (if it is reserved), and any confessor may, outside of the diocese or territory, absolve the delinquent (c. 2247, §2). Penalties attached to particular *precepts* continue in force even as to their reservation outside of the territory of the superior (c. 2247, §2). But all penalties, until remitted, supposing they have been incurred, continue to bind outside the territory of the superior until removed (c. 2226, §4).

ART. V

Interpretation of Penalties

The fundamental rule here is: *In poenis benignior est interpretatio facienda* (c. 2219, §1). That is, of two or more probable opinions in a doubtful penal law, that interpretation must be followed which is the milder one from the delinquent's viewpoint. Thus, in doubt whether a particular suspension or interdict is a censure or a vindictive penalty, it must be presumed a censure (2255, §2). The reason is that censures are more easily lifted, and it suffices that the delinquent repent in order that he may obtain absolution. Again, in doubt whether a *latae sententiae* penalty is reserved or not, it must be understood as not reserved (c. 2245, §4). In the same way, it is forbidden to extend a penalty from one case to another or from one person to another even though the cases appear analogous. Thus, penalties decreed against abortion do not apply to craniotomy; penalties enacted against the violation of papal enclosure do not apply to violations of episcopal enclosure, etc. (cfr. c. 2219, S3). But a penalty may and must be extended to all principals in the same crime, not to the accessories (c. 2231). And so, penalties decreed against those who engage in a duel are to be extended to the witnesses and physicians, for these must he considered principals in the light of what was said elsewhere (p. 674).

ART. VI

The Application of Penalties

Penalties whose application and infliction call for a formal criminal trial cannot be applied extrajudicially, but the formalities

of a trial must be observed as already outlined. If the penalty is one which can be indicted extrajudicially, this should be done by means of a written decree, or before two witnesses, and the reasons for the punishment must be indicated, saving eases of suspension *ex informata conscientia,* where the reason need not be stated.

This decree must not be confused with the penal precept. The precept precedes the decree. After one has violated the precept the superior, supposing he has evidence of its violation, should inform the offender that the penalty which he threatened in the precept now applies. This information is the content of the decree. Like the precept, the decree must be given in writing, and signed by the superior and his notary, and delivered to the offender either in person or through registered mail. But the offender can, instead, be informed in the presence of two witnesses that the penalty now applies. In any event a record of the penalty having been imposed must be kept in the archives (c. 2225).

Which penalties can be imposed extrajudicially, and which call for a formal criminal trial is a much disputed question as we saw on p. 617.

ART. VII

Requisites of a Just Penalty

For a penalty to be just it is necessary: 1) that the superior or the judge who imposes it should be competent; 2) that, saving the case contemplated by c. 2222, §1, a warning shall have preceded, as explained on p. 669; 3) that the penalty be in proportion to the offense (c. 2218, §1) ; 4) that no excuse disclaiming grave imputability can be offered (c. 2218, §2).

In the next article it will be seen what remedy the law offers the aggrieved party against a supposedly unjust penalty.

ART. VIII

Redress Against Penalties

If the penalty was imposed by way of a court sentence the law generally allows appeal with suspensive effect. If the superior's extrajudicial decree inflicted the penalty, the law generally allows only recourse *in devolutivo* so that the penalty in the meantime must be observed. But there are exceptions.

Redress against *censures,* if these have been *applied,* i.e., inflicted, whether by court sentence or the superior's decree, is allowed only *in devolutivo* (c. 2243, §1).

Redress against *threatened* censures is permitted *in suspensive,* unless the precept which threatens the censure is one from which, in case no censure had been threatened, the law would allow recourse only *in devolutivo.* Here redress against the censure threatened by the precept is likewise allowed only *in devolutivo* (c. 2243, §2). The law must expressly state in reference to the subject matter of the precept that one can have recourse but only *in devolutivo,* e. g., c. 106, n. 6; 192, §3; 296, §2; 880, $2; 1340, §3; 1395, §2, etc. If the law, or particular canon, states nothing in this regard, and despite the general principle that recourse from extrajudicial precepts is generally allowed only *in devolutivo,* yet if the precept carried a threat of censure, recourse from the censure (not the precept) is permitted *in suspensive.*

On the other hand, the contrary principle operates with *vindictive* penalties, i.e., redress is allowed *in suspensivo,* both from an applied penalty and from a threatened penalty, unless the law expressly forbids this in some particular canon e.g., c. 192, §3; 2146, §1, 3, and permits redress only *in devolutivo* (c. 2287).

ART. IX

Cessation of Penalties

Penalties cease in five ways: 1) by death of the offender; 2) by loss of office of the punishing authority; 3) by expiation; 4) by prescription; 5) by pardon i.e., remission.

All penalties naturally cease upon the delinquent's death, if we except denial of Christian burial (c. 1702).

When the superior who imposed a penalty by way of decree extrajudicially loses office, no matter for what cause, his penalties also lose ail effect, unless they were imposed by way of a decree in the form of an authentic document, or orally before two witnesses (c. 24). Otherwise the penalty ceases, since the precept itself will cease in virtue of c. 24. This cessation of the penalty upon the superior's loss of office is likewise verified if he added the clause to the penalty: *ad beneplacitum nostrum,* or its equivalent. Even though the penalty continues, the successor in office may remit it, since his powers are equal to those of his predecessor. By the mere

departure from the territory of the superior who inflicted a penalty by way of precept, the penalty does not cease.

By expiation those penalties cease which are imposed for a fixed time, e.g., suspension for a month (c. 2289). In that case the penalty automatically ceases after it has been observed a month. Since a censure cannot be imposed for a definite length of time, it cannot cease bv expiation, but only bv absolution upon repentance (c. 2248, §1).

In virtue of prescription criminal action cannot be instituted (and the penalty cannot be imposed) if no action was taken by the superior: 1) within one year of the commission of the offense in the case of personal injuries; 2) within five years in the case of offenses against the sixth and seventh commandment; 3) within 10 years in the case of simony and homicide; 4) within three years in the case of all other delinquencies. But crimes reserved to the Holy Office are governed by the laws of procedure peculiar to this department of the Holy See (c. 1703).

But the most usual way in which penalties cease is through their remission. This act is called *dispensation* in the case of vindictive penalties, and *absolution* in case of censures. It should be noted that a vindictive penalty may be remitted after it has been observed for some time and prior to its full expiation.

We shall henceforth coniine our attention to the *remission* of penalties and shall consider: 1) the general principle of pardon; 2) the pardoning powers of *Ordinaries* in the case of common law penalties; 3) the pardoning powers of *confessors* in the case of common law penalties.

§1. General Principles Concerning the Remission of Penalties

A penalty may be remitted: 1) by the superior who enacted the penal law or issued the penal precept; 2) by his competent superiors; 3) by his successor in office; 4) by those whom the superior who enacted the penal law or precept has authorized to grant pardon (c. 2236). But the judge who merely applies a penalty enacted by the superior cannot remit the penalty once he has inflicted it (c. 2236, §3).

A penalty may be validly remitted either in the delinquent's presence or absence, absolutely or conditionally, in the external forum or the internal forum (c. 2239, §1). These principles hold true unless modified in some particular case, c. g., pardoning powers granted

to confessors as such can be exercised only in the delinquent's presence and *in foro sacramentali.*

Although a penalty may be remitted by word of mouth, yet if it was imposed in writing, it is expedient that its remission be granted in writing (c. 2239, §2). This is for the protection of the delinquent that he have proof of his pardon in the event such proof is later required.

In remitting a penalty no special form of words is required; it suffices to inform the offender that he is pardoned. But in the sacramental forum the customary form of sacramental absolution is used.

§2. Pardoning Powers of Ordinaries

We are concerned with the pardoning powers of Ordinaries in the case of common law penalties. As to their power to remit their own penalties, or those of their predecessors, or censures reserved to themselves by common law, the principles just stated above apply.

The pardoning powers of Ordinaries (also regular major superiors) are contained in c. 2237, namely:

1) In *public* offenses the Ordinary may pardon, saving: a) offenses brought to the court at least through the citation of the accused; b) censures reserved to the Holy See; c) the vindictive penalties of disqualification for offices, dignities, positions in the Church, and privation of active and passive voice, perpetual suspension, infamy of law, privation of the right of patronage or of any privilege or favor granted by the Holy See (c. 2237, §1) ;

2) In *occult* cases the Ordinary may remit all *latae sententiae* penalties, whether vindictive or medicinal, saving censures reserved to the Holy Sec *specialissimo* or *speciali modo,* but safeguarding the right of the Ordinary even in these excepted cases to absolve in the capacity of confessor in danger of death (c. 2252) and the otherwise urgent cases contemplated in c. 2254, 2290 (c. 2237, §2).

It should be remarked that *local* Ordinaries receive further pardoning powers for occult cases from the S. Penitentiary in virtue of their quinquennial faculties; while those of the Apostolic Delegate are even more extensive (cfr. p. 732, 737 ff.).

§3. Pardoning Powers of Confessors

We shall consider: 1) the power of confessors to absolve from *censures·,* 2) their authority to dispense from *vindictive* penalties.

A. Faculties Concerning Censures

The faculties of confessors vary according to whether the remission of the penalty is urgent or not. We shall consider the faculties of confessors: 1) in ordinary non-urgent cases; 2) in cases where the penitent is in danger of death; 3) in urgent cases outside of danger of death.

(1) *Faculties in ordinary Cases*

(c.2253)

By ordinary cases we mean those cases in which the penitent is neither in danger of death, nor is he in the urgent need of absolution to be described below.

In ordinary cases every confessor can absolve from non-reserved censures. But from censures reserved to the Ordinary or to the Holy See a simple confessor cannot absolve. We say a *simple* confessor, meaning a confessor who has not received special absolving faculties for ordinary cases from the Ordinary or the S. Penitentiary, for in this latter supposition he is a privileged confessor.

It is a probable opinion, however, that all regular confessors, i. e., priests who belong to a religious Order, have the privilege of absolving even in ordinary cases from censures reserved by the common law to the Ordinary. Concerning the origin of this privilege, cfr. Kelly, *The Jurisdiction of the Confessor,* p. 58.

(2) *Faculties in Danger of Death*

Canon 882 gives to every priest, even though not otherwise approved for hearing confessions, the power to absolve not only from all sins, but also from all censures, no matter in what manner the sins or censures are reserved, any penitent in danger of death.

If, however, the censure was reserved to the Holy Sec *specialissimo modo,* or if it was a censure *ab homine,* the penitent, if he recovers, will have the obligation of taking recourse to the Holy See (S. Penitentiary), usually through the confessor, and asking for instructions *{mandata).* What this means we will explain directly. If the bishop or anyone else, has ordinary delegated powers from the Holy See to absolve, i. c., in *ordinary* cases from most specially reserved censures (a rare possibility), the convalescent penitent may recur to these instead, for the *mandata {Acta,* 1922, p. 663 states that the bishop cannot give the *mandata* unless he has Code powers or induit powers to absolve from the penalty in non-urgent cases).

If the censure was *ab homine,* the recovered penitent must go to the superior who imposed the censure by way of decree, or who authorized the judge to conduct the criminal trial (c. 2252).

By *mandata* the Code means instructions or orders given to the penitent with a view to testing the sincerity of his repentance, and restoring the public order by repairing scandal and satisfying for injuries if any were caused. These instructions will vary according to the nature of the offense: he must quit the forbidden society; he must destroy a prohibited book; he must leave his unlawful spouse; he must retract a calumny; he must beg pardon of the cleric whom he assaulted; he must restore the ill-gotten goods; he must return to his religious community from which he apostatized, etc. To grant absolution to anyone unwilling to repair scandal and wrongs in cases such as these, or to avoid the occasion of sin henceforth, would be a mockery to the sacred tribunal. A penitent unwilling to accept these burdens *(mandata)* lacks sincere contrition for his misdeeds.

In danger *of* death the penitent can be absolved upon the *promise* to repair scandal and ask for the *mandata* in the event that he recovers. He must be reminded that should he fail to keep his promise he will fall automatically into the same censure again.

(3) *Faculties of Confessors in Urgent Cases Outside of Danger of Death*
(c. 2254)

In urgent cases outside of danger of death, if a censure *latae sententiae* cannot be observed in the external forum without danger of grave scandal or infamy, or if it is hard for the penitent to remain in the state of grave sin for the length of time necessary for the competent superior to provide for his case, then any confessor can absolve in the sacramental forum from the censure, no matter in what way reserved, but he must enjoin upon the penitent the obligation, under penalty of relapsing into the same censure, to take recourse within a month, at least by means of a letter and through the confessor (the latter giving the penitent a fictitious name) to the S. Penitentiary, or to the bishop, or to any superior with the required absolving faculties for such censures in *ordinary* circumstances, and to abide by their *mandata.*

Nothing forbids the penitent, even after he has received absolution as above described and has taken recourse to the superior for the *mandata* through the confessor, from approaching another confessor with privileged faculties (e. g., a regular in the case of a censure reserved to the local Ordinary by law), and from repeating his confession, or at least the censured sin, and receiving absolution anew; having received which he may accept the *mandata* from this confessor without the obligation of abiding by the *mandata* which

later may come from the superior to whom he originally had recourse.

And if in some extraordinary case this recourse is morally impossible, then any confessor may himself give the *mandata* with the proviso that if the penitent fails within the time determined by the confessor to perform the penance and otherwise make due satisfaction as the case may demand, the penitent will automatically lapse into the same censure (cfr. c. 2254).

The urgent case outside of danger of death, as in the three preceding paragraphs, supposes that the censure cannot be observed without injury to one's good name, or without causing grave scandal. Thus, a priest under censure may have to say Mass and must be restored to the state of grace. Or the penitent may find it hard *(durum)* to remain in the state of mortal sin until recourse for absolving faculties is obtained from the competent authorities. Authors claim that a delay of one day suffices, and that the confessor is permitted to dispose the penitent so that the latter will conceive the hardship of remaining in mortal sin for even one day. Certainly, (if the bishop has the faculties), there is no obligation to ask for delegation by phone. If the penitent wishes to come back, e.g., *next Saturday,* and repeat the confession while the confessor in the meantime writes in for the faculties (concealing the penitent's name), this is permissible, but not necessary where the penitent feels the hardship of such procedure. Better that the penitent be absolved *hic et nunc,* and told to return later for the *mandata,* and if even this would be morally impossible, the confessor can give the *mandata* also *hic et nunc,* e. g., the confessor is a missionary and will leave the parish soon, or he is otherwise a transient in the parish. Finally, it may be noted that more frequently than not the penitent, while conscious of violating a law, and convinced of having sinned gravely, was ignorant of the penalty. It would be well for confessors to interrogate their penitents on this point, and if ignorance of the penalty can be proved (and the confessor must believe the penitent), then no censure was contracted. But ignorance of the penalty for a second offender is not to be presumed.

B. Faculties Concerning Vindictive Penalties

In occult and urgent cases, if by observing a *latae sententiae* vindictive penalty which he incurred (e.g. suspension), the delinquent would betray himself with resultant scandal and loss of reputation, any confessor can in the sacramental forum suspend the obligation of observing the penalty. But he must enjoin upon the penitent the obligation to take recourse at least within a month by letter and

The distinction between a heretic, apostate from the faith, and a schismatic is defined in c. 1325, §2: a heretic being a baptized person who rejects *some* revealed truths, an apostate one who rejects *all* revealed truths, a schismatic one who *refuses submission* to the Roman Pontiff or communion with the Church. That a Catholic fails to practise his religion does not necessarily imply apostacy, heresy or schism.

The subject under discussion finds practical application in the case of converts to the faith. Though they may have been *bona fide* non-Catholics, and baptized and brought up in the non-Catholic sect through ignorance, still until ignorance is proved, canon law presumes culpability in the external forum (c. 2200, §2). We say, if they were baptized in a non-Catholic sect, and this supposition gives rise to the following procedure: 1) a certainly non-baptized convert is baptized absolutely, no abjuration is required, nor sacramental absolution from sin or censure; 2) a certainly baptized non-Catholic convert is thus received: abjuration, i.e., profession of faith, absolution from the censure in the external forum, sacramental confession; 3) a doubtfully baptized convert is thus admitted: abjuration of error (profession of faith), conditional baptism, conditional absolution from the censure in the external forum, sacramental confession with conditional absolution from sins (cfr. H. Off., July 20, 1859, *l'ontes,* IV, ŋ. 953, or the *Priest's New Ritual,* p. 48, where also is found the formula of profession). When a grave and reasonable cause is present, c. 755, §2 permits the Ordinaries to allow the solemn form of infant baptism in the baptism of adults, and some Ordinaries by special induit may permit the extremely short form of baptism as found in the *Priest's New Ritual,* p. 61 (John Murphy Co., Baltimore); otherwise the long form, or ceremony, for adult baptisms must be employed as contained in the *Rituale Romanum.*

ART. II

Prohibited Books
(c. 2318)

Editors of books written by apostates, heretics or schismatics, which professedly teach apostacy, heresy or schism, incur *ipso facto* excommunication reserved to the Holy Sec *speciali modo.*

Those persons who knowingly, and without due permission, defend, read, or retain in their possession the above books, or any book which has been forbidden by Apostolic Letters *nominatim,* likewise incur the same censure as above.

Authors and editors, who, without due permission, publish Books of Sacred Scripture, or annotations or commentaries thereon, incur *ipso facto* excommunication reserved to no one.

The above arc the only books forbidden by common law under penalty of censure. Hence, not every book on the Index is forbidden under censure, since some of them do not teach heresy, schism or apostacy professedly, nor have they been banned *nominatim* by Apostolic Letters. However, books which arc on the Index, and even though not forbidden under censure, arc banned under penalty of grave sin, unless due permission to read them is previously obtained. Competent to give such permission is the Ordinary of the reader (c. 1402).

The books which we have seen are forbidden under censure (and they need not necessarily be found in the Index), must be books of about 250 octavo pages in the estimation of Vermeersch-Creusen (o. *c.,* III, n. 517). It docs not suffice if they are merely leaflets or booklets advocating heresy, etc. Nor would a few pages of a real book advocating heresy, etc., suffice if the rest of the book treated of other, non-condemned, subjects, for these pages would be only an incidental treatment, the book could not be said to teach heresy, etc., *ex professo.* The same applies to an occasional article in a magazine or newspaper.

Not all books are on the Index as a result of condemnation *nominatim* by Papal Letters. Most of them have been inserted at command of the Holv Office, or some other Congregation, and in that case they cannot be said to have been condemned by Papal Letters. At any rate the Letters must specify the author's name, the book's title, and the fact that the work is forbidden under penalty of censure. In the 1930 edition of the Index, books which are forbidden *nominatim* by the R. Pontiff arc prefixed by a small dagger.

ART. HI

Attempted Marriage

Those who attempt marriage before a non-Catholic minister incur *ipso facto* excommunication reserved to the local Ordinary (c. 2319, §1. n. 1). While it is certain that a mixed marriage before a non-Catholic minister is included in this canon, it is disputed whether the censure is incurred by *two* Catholics who marry before a non-Catholic minister. The reason for the doubt lies in the fact that the present c. 2319 refers us to c. 1063, §1, by adding that those

who so marry in contravention of c. 1063 incur the excommunication. But c. 1063 contemplates only mixed marriages. At any rate, the discussion has no practical importance in the United States because the III Plen. Counc. of Baltimore (n. 127) inflicts *ipso facto* excommunication upon all Catholics who contract marriage before a non-Catholic minister, and uses generic terms, so that the penalty can hardly be restricted to those who contract a mixed marriage. Before requesting faculties to absolve from the censure, the confessor will inquire whether the marriage can be validated in the eyes of the Church. Sometimes this is not possible because one or both parties are divorced from their former spouse who is still aliye, and the impediment of the bond would forbid the present marriage to be validated, an impediment which being of divine law cannot be dispensed with by the Church. If there is no possibility of validating the marriage contracted before the non-Catholic minister, the parties must separate, and if the penitent refuses to do so, there is no reason to apply for special faculties to dispense from the censure, since sacramental absolution from sin is impossible, the determination to continue in the sin of adultery precluding a sincere purpose of amendment.

The Code does not punish with censure a marriage contracted by a Catholic before a civil official. However, the III Plen. Counc. of Baltimore (n. 124) has established an *ipso facto* excommunication in this case reserved to the local Ordinary, namely, if the Catholic marries before a civil officer after having obtained a civil divorce. If no civil divorce preceded (it may be a first marriage), attempted civil marriage is not punished by the Council, but in some dioceses it is a reserved sin in virtue of diocesan statutes.

Marriage attempted by clerics in major orders, or by religious with solemn vows, is punished by *ipso facto* excommunication reserved to the Holy Sec *simpliciter* (c. 2388, §1). Both the cleric, or the religious, and the other partner to the marriage incur this censure. Likewise, clerics automatically lose all offices which they had in the Church, and if they do not repent within the time fixed in the Ordinary's warning, they are to be degraded (c. 2388, §1). This applies equally to secular and religious clerics, and besides all religious with solemn vows who attempt marriage are *ipso facto* dismissed from their Order (c. 646, §1,n. 3).

On Apr. 18, 1936 the S. Penitentiary (*Acta* XXVIII, 242) declared that a priest who attempted marriage and is now repentant, but for very exceptional reasons finds it extremely difficult to quit common habitation with his married partner (e. g., because of difficulties of the civil law), may refer his case to the S. Penitentiary for

absolution in order to enable him (and possibly his consort if a Catholic) to receive sacramental absolution and go to communion in the manner of the laity, but on condition that he promise to observe perfect chastity forever thereafter. Some writers having misinterpreted this declaration in the sense that any confessor could now absolve such priest in urgent cases in virtue of c. 2254, the S. Penitentiary on May 4, 1937 (*Acta* XXIX, 2S3) issued a further declaration to the effect that a priest who has attempted marriage can be absolved by no one save the S. Penitentiary itself, excepting the case of danger of death. The reason here is obvious, for although in urgent cases outside of danger of death a confessor at times may absolve from all censures, he must do this on condition that the penitent is truly repentant and is willing to avoid the occasion of sin, in addition to the obligation of recourse to the superior. But here, the confessor would absolve without imposing the duty of separation, a privilege which is extraordinary, and which is not contemplated by c. 2254, but which only the Holy Sec could grant.

Religious with simple *perpetual* vows who attempt marriage incur *ipso facto* excommunication reserved to their proper Ordinaries (2388, §2). They arc *ipso facto* dismissed from the religion (c. 646, 81, n. 3). If they arc clerics in major orders, the same penalties as above described apply (c. 2388, §1).

Religious with simple temporary vows who attempt marriage incur no censure in virtue of common law. But they arc *ipso facto* dismissed from the religion (c. 646, 81, n. 3). If they are clerics in major orders, the penalties as above apply.

Clerics in minor orders who attempt marriage are *ipso facto* degraded, i. e., reduced to the lay state (c. 132, §2).

ART. IV

Non-Catholic Education of Offspring (c. 2319)

Parents, or those who take the place of the parents, e. g., guardians, who knowingly have their children educated in a non-Catholic religion incur *ipso facto* excommunication reserved to the local Ordinary. The same censure is incurred by those who contract marriage with the understanding that all or some of the children will be raised as non-Catholics.

The sending of the children to the public schools in this country is not equivalent to educating the children in a non-Catholic religion,

because these schools arc supposed to be non-sectarian. However, c. 1374 forbids Catholic parents to send their children to non-sectarian schools save with the permission of the local Ordinary.

In some dioceses local law may make it an offense punishable with *ipso facto* excommunication to send children to a public school without previous approval of the bishop, or his delegate, c. g., the pastor. Concerning this whole question, especially the duties of a confessor in the case of parents who send their children to public schools without ecclesiastical permission, cfr. Sabetti, *Compendium Theologiae Moralis,* p. 256, *sq.* XXVIII ed.

ART. V

Profanation of the Sacred Species
(c. 2320)

He who casts away *(abjecerit)* the Consecrated Species, e.g., by throwing them to the ground, trampling on them, etc., or who carries them off or retains them for an evil purpose, incurs *ipso facto* excommunication reserved to the Holy See *specialissimo modo;* he is *ipso facto* under infamy of law, and if a cleric he must be deposed. In the Middle Ages the delinquent in the present case, after his guilt was proven by the ecclesiastical court, and he remained obstinate, was handed over to the lay court who inflicted capital punishment.

ART. VI

Violation of the Privilege of the Forum

He who dares to cite before a lay judge a cardinal, papal legate or (in matters pertaining to their office) some major official of the Roman Curia, or one's own Ordinary, contracts *ipso facto* excommunication reserved *speciali modo* to the Holy Sec; if he cites any other bishop, even a titular bishop, or an abbot or prelate *nullius,* or the supreme moderator of some religion of papal law, he incurs excommunication *latae sententiae* reserved to the Holy See *simpliciter;* if any other person who enjoys the privilege of the forum (including religious and novices) is cited, the delinquent, if a cleric, incurs *ipso facto* suspension from office; if a layman, he shall be punished by his Ordinary with appropriate penalties (c. 2341).

The above penalties are not incurred if in harmony with c. 120

permission to sue the cleric or religious or novice was obtained by the competent ecclesiastical authority.

There, too, we saw that in the United States lay plaintiffs arc not forbidden to sue clerics in the secular courts. However, if the object of the suit is to obstruct the exercise of ecclesiastical jurisdiction, c. g., to obtain an injunction against the bishop's decree of removal from an office, laymen as well as clerics incur excommunication *ipso facto* reserved to the Holy See *speciali modo* (c. 2334, η. 2). Clerical plaintiffs in this case, moreover, are to be suspended, and deprived of their benefices and offices, whereas religious plaintiffs are to be suspended from office, deprived of active and passive voice, and punished with other penalties possibly provided by the constitutions (c. 2336).

ART. VII

Forbidden Societies

Those who join the Freemasons, or similar societies which plot against the Church and the lawful civil authorities, contract *ipso facto* excommunication reserved *simpliciter* to the Holy See (c. 2335). If the delinquent is a cleric or religious, he must be reported to the Hob Office (c. 2336, §2).

In addition to the masonic sects which arc expressly mentioned in the above canon, and membership in which was first forbidden under penalty of excommunication by Clement XII, Apr. 28, 1738, *(Fontes* I, n. 299), we have the Fenians of Ireland and England condemned under censure by the H. Off. Jan. 20, 1870, *(Fontes* IV, n. 1012). Similar in scope to the above, because they plot against the State or the Church would be Communistic and Anarchistic organizations, but not necessarily all Socialistic Societies, for the latter often merely seek to change the form of government, not to abolish all government. The conditions under which Freemasons and the adherents of societies akin to them may be absolved arc stated in the quinquennial faculties of our local Ordinaries (cfr. p. 733).

Some societies, while not plotting against lawful authority, nevertheless constitute a menace to the faith and morals of its members, and of these some have been condemned by name but not under censure, namely: 1) The Independent Order of Good Templars (H. Off., Augi 9, 1893; *Tontes* IV, 1167; 2-3-4); The Odd Fellows, Sons of Temperance and Knights of Pythias (H. Off., Aug. 20, 1894, *Fontes* IV, n. 1171). Passive membership in these four societies may be retained under conditions stated by the H. Off. on

Jan. 18, 1896, namely: that the penitent joined the society in good faith without knowing that it was forbidden; that he is giving no scandal by remaining in the society; that grave temporal harm would result from renouncing membership, e.g., insurance loss; that there is no danger of perversion to the penitent. Whether these conditions arc actually verified in some individual case is not for the confessor to judge, but for the Apostolic Delegate, or the Archbishop (H. Off. June 27, 1913).

Lest scandal be given to the faithful, and contempt for ecclesiastical authority would result, where a society (other than those expressly forbidden by the Holy See as in the preceding paragraph) should be forbidden by a public decree of the bishop in one diocese, and tolerated in other dioceses, the III Plcn. Counc. of Baltimore n. 255, ruled that no society should be condemned, even apart from censure, save by a board of the archbishops of the entire country. Nevertheless, the confessor has the right and duty, relying solely on his private judgment, to deny sacramental absolution to his penitent who belongs to a society which the confessor believes to be a source of danger to the penitent's faith or morals, and this whether the society has been expressly forbidden or not by the ecclesiastical authorities (III Plen. Counc. Balt., n. 247). On this entire question the reader is referred to Sabetti, *o.c.,* p. 1028 *sq.* XXVIII ed.

ART. VIII

Violation of Papal Enclosure

They incur *ipso facto* excommunication reserved *simpliciter* to the Holy See who:

1) Violate the enclosure of nuns by entering the enclosure limits without permission of the competent ecclesiastical superior, or who permit such persons to enter the enclosure;

2) Violate the enclosure of regulars by unlawfully entering the monastery enclosure or permitting entrance to outsiders;

3) Leave the enclosure without due permission in the case of nuns (c. 2342).

We have seen what is meant by papal enclosure. Certain persons arc privileged by law to enter the enclosure. Others may enter with episcopal permission in the case of a monastery of nuns. But aside from privileges and permissions, the enclosure is violated by persons of either sex who enter the monastery of nuns; by women only who enter the monastery of regular men. To have an enclosure

the limits must have been fixed by the competent superiors, and these limits must be indicated to the public, otherwise enclosure does not exist and cannot be violated. We saw what circumstances would justify a nun Icaving«thc monastery without permission. Regular men do not incur the censure of common law who leave the religious house without permission, i. e., they do not thereby violate the enclosure, but they may contract censure by reason of apostacy or flight, as we shall sec.

ART. IX

Assault on Clerics
(c. 2343)

According to the dignity of the person assaulted, the Code distinguishes four categories of penalties for the violation of the privilege of the canon:

1) One who lays violent hands on the person of the Roman Pontiff incurs *ipso jacto* excommunication reserved to the Holy Sec *specialissimo modo;* he is *ipso facto vitandus;* he is *ipso jure* under infamy; if he is a cleric he must be degraded.

2) One who lays violent hands on a cardinal or papal legate incurs *ipso facto* excommunication reserved to the Holy See *speciali modo;* he contracts automatically infamy of law; and he is to be deprived of all benefices, dignities, offices, pensions and positions which he may have in the Church.

3) Those who lay violent hands on a patriarch, archbishop or bishop, whether a residential or titular archbishop or bishop, incur *ipso jure* excommunication reserved to the Holy See *speciali modo.*

4) Those who lay violent hands on any other cleric, or upon a religious (or novice), incur *ipso facto* excommunication reserved to their proper Ordinary, who. if the case warrants it, may add additional punishment according to his prudent judgment.

The Code at this place employs the expression "violent hands." but this includes any act by which the privilege of the canon is violated. These various acts we have considered already on p. 170.

Whether passion, ignorance, etc. excuse from the censure in any particular case is left to the confessor in the sacramental forum; to the prelate in the external forum. Moreover, in the external forum malice is presumed until the contrary be proved (cfr. c. 2200, $2). *Attempted* assault is not punished with censure, but it may be punished with other penalties according to the discretion of the superior (c. 2235).

ART. X

Religious Apostates and Fugitives
(c. 2385-2386) -

A religious who apostatizes from his religion incurs *ipso facto* excommunication reserved to his major superior in clerical exempt religions, but to the local Ordinary where he is staying if he belongs to any other kind of religion. Likewise he loses all the privileges of his religion (c. g., exemption) while he is away, and when he returns he is forever deprived of the right of active and passive voice (the right to vote to an office or to be voted for, or appointed to an office). The constitutions may add other penalties. If the apostacy is qualified by the additional crimes specified in c. 646, the religious is *ipso facto* dismissed from his religion (c. 2385).

A religious fugitive *ipso facto* incurs privation of any office he may have, and if he is a cleric in major orders, he incurs *ipso facto* suspension reserved to his major superior, in addition n other penalties which the constitutions may establish or authorize (c. 2386).

The canons arc clear on the above penalties and nothing more need be added by way of explanation save to refer the reader to the definition of an apostate and fugitive as given on p. 382. Only one doubt remains, namely, whether the local Ordinary or the major superior absolves from the suspension incurred by a religious fugitive who is a member of a clerical non-exempt religion. If the major superior is empowered to grant the absolution, it is the only case where the Code grants such superiors jurisdiction in the strict sense. Only the Code Commission can definitely settle the question. In practise the religious can be absolved by cither the major superior or the local Ordinary, and this in virtue of c. 209.

ART. XI

Abortion
(c. 2350)

Those who procure abortion, the mother herself not excluded, incur a *latae sententiae* excommunication reserved to the Ordinary, provided abortion was not merely attempted but really effected. Clerics, moreover, who cooperate in this crime are to be deposed.

Abortion is the ejection of an immature fetus from the womb.

Whether the fetus is animate or inanimate is immaterial in theory, while in practise the precise moment of animation cannot be determined anyway. The fetus is considered immature, i. c., incapable of living its own life outside of the womb before the seventh month subsequent to conception. After the seventh month the ejection of the fetus is called acceleration, and whether lawful or unlawful in view of the particular circumstances of the case, it is not to be classed as abortion. Neither is craniotomy abortion, nor is the extraction of an *extra-uterine* fetus abortion; in both cases where direct death is intended wc have homicide and the crime is accordingly punished with the penalties decreed against homicide as in c. 2354, although no *latae sententiae* penalty is inflicted. Finally, the ejection of the semen within a very short time following copulation, e. g., within 24 hours, is not abortion since there is yet no fetus in all probability, there being no conception. But in this case wc speak of onanism, and although gravely sinful, the offense carries no special penalty in the Code, the abuse being one best remedied by denial of sacramental absolution, or the constructive counsel of a prudent confessor.

The penalty is incurred by all who cooperate in the procuring of an abortion as implied in c. 2209. Some pre-Code commentators on the Constitution *Aftostolicae Sedis* were wont to exempt the mother from the excommunication on the theory that grave fear or some other extenuating circumstance was always present to exclude malice on her part. The Code expressly includes the mother although grave fear or any other cause diminishing imputability on her part will excuse as in the case of any other *latae sententiae* censure (cfr. p. 681). She is not exempted, however, on a general presumption as hitherto.

ART. XII

Unlawful Alienations

(c. 2347)

We have already seen what constitutes an unlawful alienation of ecclesiastical goods, cfr. p. 570.

In addition to the annulling effect given to the contract by c. 534 and c. 1530, the Code in c. 2347 punishes with excommunication *latae sententiae* reserved to no one the unlawful alienation of goods whose value exceeds 30,000 lire, or for which an Apostolic induit is required. That this refers to the contracting of debts in

the case of religious is evident front the fact that c. 2347 expressly refers us to c. 534, §1. Whether it includes the contracting of debts by a non-religious administrator, or by a religious administrator in the capacity of a cleric, e. g., a pastor, is not certain; and since wc are now in penal matters where a strict interpretation is required, the extension is not justified, and alienation here means only those acts by which ownership of ecclesiastical goods is actually transferred, not merely pledged (Chelodi, *Jus Poenale,* n. 79; Trent, Italy, 1920).

For unlawful alienations of goods which do not exceed the value of 30,000 lire, c. 2347 establishes a variety of penalties, but these being *ferendae sententiae,* we refer the reader to the Code under the canon cited.

ART. XIII

Abandonment of the Clerical Garb

Clerics who in violation of c. 136 (cfr. p. 178) do not wear the clerical garb, should be gravely warned to do so. If within a month after being warned a cleric in minor orders fails to resume the garb, he is *ipso facto* reduced to the lay state; a cleric in major orders after a month's lapse *ipso facto* loses all offices which he may have, and this in virtue of tacit resignation, and in addition he should be suspended. If after being warned anew he leads a life notoriously foreign to the clerical state, he shall after three months from this second warning, being found unreformed, be deposed (c. 2379).

ART. XIV

Concubinage, Non-Residence, Pastoral Negligence

Clerics, religious as well as secular, who are found guilty of concubinage (even of suspected concubinage, cfr. p. 178), must be admonished, and if they disregard the warning they may be suspended *a divinis,* and deprived of the income of their benefice, office and dignity (c-2359, §1). The same clerics may be deprived of the benefice and office itself after a further warning in accordance with c. 2176-2181 (cfr. p. 662).

Clerics who by reason of their office or benefice are held to the law of residence and fail to observe residence shall, for the time of their unlawful absence, be deprived of the income from the office

or benefice *pro rata absentiae* (c. 2381). If after due warnings they remain contumacious, they may be deprived of the office and benefice itself in accordance with c. 2168-2175 (cfr. p. 662).

Pastors negligent in the pastoral duties described on p. 662 may be deprived of their parish in punishment by the extrajudicial procedure there outlined. Pastors negligent in writing up the palish books shall be punished by the Ordinary in proportion to the gravity of their guilt (c. 2382, 2383).

ART. XV

Violation of the Sacramental Seal
(c. 2369)

A confessor who dares to violate directly the seal of confession incurs excommunication *latae sententiae* reserved to the Holy See *specialissimo modo;* if he rashly violates the sacramental seal indirectly, he contracts the penalties which the law decrees in the case of *solicitation,* which we shall consider in Art. XVII.

Direct violation consists in revealing both the sin which one discovers in confession and the name of the penitent, as where a priest says: *Titius hoc fecit,* etc. Indirect violation is present when from the confessor's speech or conduct there is grave danger that the penitent's sins be suspected, or he be embarrassed. As Sabetti, *o.c.,* n. 817 rightly remarks, direct violations of the sacramental seal are extremely rare, thanks to divine providence. But indirect violations arc not so rare. The same author *(ibid.)* enumerates various ways in which the sacramental seal can be indirectly broken.

C. 2369 uses the word *praesumpserit;* hence, full knowledge and deliberation are presupposed, and any of the extenuating circumstances mentioned on p. 681 will excuse the confessor from the censure.

It should be added that the Code inflicts no censure upon a person who, other than the confessor, happens to know of the penitent's sins, e. g., by overhearing the confession, and reveals the same, although such revelation would be gravely sinful in itself.

ART. XVI

Absolutio Complicis
(c. 2367)

A priest who absolves, or feigns to absolve, his accomplice in a sin of impurity *ipso facto* incurs excommunication reserved to the

Holy See *specialiftimo modo.* 'I'he censure is incurred even if he «absolves the penitent when the latter is in danger of death if another priest, even though not approved for hearing confessions, can hear the penitent's confession without any grave danger of loss of reputation to the accomplice priest, or danger of scandal, except where the penitent refuses to confess to any priest other than the accomplice (c. 2367, §1).

'I'he same excommunication is incurred by the priest who absolves, or pretends to absolve, the accomplice who docs not confess the sin of impurity, from which absolution was not granted, for the reason that the penitent was induced by the confessor directly or indirectly not to mention the sin (c. 2367, $2). On Nov. 16, 1934 the II. Off. *(Acta* XXVI, 634) declared that the indirect inducing contemplated here is verified when the confessor persuades the accomplice that their relations are not gravely sinful, and the matter need not be mentioned in the confessional.

What further is meant by the *absolutio complicis in peccato turpi* can be learned from any manual of moral theology, cfr. Sabetti, *o. c.,* n. 785.

ART. XVII

Crime of Solicitation
(c. 2368)

Solicitation in connection with sacramental confession is not to be confused with absolving one's penitent in a sin of impurity of which we just spoke. 'I'he delinquency under present consideration consists in the attempt by a confessor to induce his penitent into a grave sin against chastity, this attempt being made in the act of sacramental confession, or on the occasion or pretext of confession.

To safeguard the sanctity of the confessional against such possible abuses, the Church punishes most severely any confessor who has been found guilty of the crime of solicitation. No *latae sententiae* penalty is incurred by him it is true, but very severe vindictive penalties arc established in c. 2368: the priest upon being found guilty is to be suspended from the celebration of Mass, and from hearing confessions; he must be deprived of all benefices, dignities, offices, and active and passive voice, and is to be declared disqualified in regard to the same, and in exceptionally enormous crimes of this nature he is to be degraded.

The more effectively to prevent abuses of this kind, canon law imposes upon the solicited penitent the obligation of denouncing

the confessor to the bishop or the Holy Office, and this within one month. And any confessor to whom the solicited penitent may subsequently reveal the case has the duty of instructing the penitent of the grave obligation to make the denunciation (c. 904). /Xftcr being instructed concerning this obligation, the penitent who fails to denounce the priest, incurs excommunication *latae sententiae* which, although reserved to no one, cannot be absolved until the penitent discharges the obligation mentioned, or seriously promises to do so (c. 2368).

While the common good requires that the crime of solicitation lk repressed, still the good name of the priest should not be allowed to suffer by reason of the loquacity, or the hatred of a revengeful penitent. Therefore, c. 894 and c. 2363 punishes the *crimen falsi* or the false accusation of an innocent priest of solicitation with the reservation of the sin of falsehood itself, and with *ipso facto* excommunication reserved to the Holy Sec *speciali modo*.

In practise the penitent who has been solicited is to be instructed by the confessor, who directly or incidentally recognizes the case as one of solicitation, to report the matter to the bishop. But the confessor must be cautious in giving this advice, and he must make sure that the penitent is speaking the truth. The denunciation is made in the presence of the bishop or his delegate and an ecclesiastical notary. If one finds this task insupportable one may substitute a written denunciation, but adding one's true name. If not even this much can be imposed upon the penitent, the confessor in some exceptional case will in charity assume the obligation for the penitent and denounce the crime personally to the bishop, or by means of a letter, concealing the penitent's name. How cautiously the bishop or his delegate must proceed is evident from the three instructions of the Holy Office (Feb. 20, 1866; *Fontes* IV', n. 990; July 20, 1890; *ibid* n. 1123; Aug. 6, 1897, *ibid* n. 1190), in which detailed rules of procedure are laid down, and questionnaires are found for interrogating the penitent or penitents. Because the accused priest has little opportunity to defend himself due to the sacramental seal, and because as a rule there is question of only one witness testifying against him, it is not the custom for the Holy Office to take measures against the accused priest until after a second or third denunciation, for then, especially if these denunciations are made by different parties, and from extrajudicial inquiry it is learned that they are not manifest enemies of the accused, the ecclesiastical authorities are sufficiently justified to act without danger to the confessor's reputation.

A List of the Latae Sententiae Excommunications, Suspensions and Interdicts Contained in the Code

1. Excommunications

a. Reserved to the Holy See *specialissimo modo* incurred by those who

1. Cast away, carry off, or retain in their possession the Sacred Species (c. 2320).

2. Lay violent hands on the person of the Roman Pontiff (c. 2343, §1).

3. Absolve, or feign to absolve, an accomplice (c. 2367).

4. Directly violate the sacramental seal (c. 2369, §1).

5. Violate certain laws in connection with papal elections (c. 2330).

b. Reserved to the Holy See *speciali modo* incurred by those who

1. Are guilty of apostacy from the Christian faith, heresy or schism (c. 2314, §1, n. 1).

2. Edit, defend, read or keep books written by apostates, heretics or schismatics, and which professedly advocate arostacy, heresy, or schism; also books which have been condemned *nominatim* by Papal Letters (c. 2318, §1).

3. Pretend to celebrate Mass or hear sacramental confessions if they are not priests (c. 2322, §1).

4. Appeal to an ecumenical council (c. 2332).

5. Appeal to the lay authorities to obstrret the promulgation or execution of Papal Letters (c. 2333).

6. Pass laws or issue commands which oppose the liberty and rights of the Church, or impede the exercise of ecclesiastical jurisdiction (c. 2334).

7. Summon before the secular court a cardinal, papal legate major official *of* the Roman Curia, or one's own Ordinary (c. 2341).

8. Lay violent hands on the person of a cardinal, legate, patriarch, archbishop or hishop (c. 2343, §2, 3).

9. Usurp or retain temporal goods and rights of the Holy See (c. 2345).

10. Fabricate or falsify Apostolic documents (c.2360).

11. Falsely accuse an innocent priest of solicitation (c. 2363).

c. Reserved to the Holy See *simpliciter* incurred by those who

1. Traffic in indulgences (c. 2327).

2. Join the Freemasons or similar societies (c. 2335).

3. Unlawfully try to absolve from an excommunication reserved *specialissimo* or *speciali modo* (c. 2338, §1).

4. Offer aid to an *excommunicatus vitandus,* or if clerics, communicate with him *in divinis,* or allow him to exercise divine offices (c. 2338, §2).

5. Cite a bishop, abbot or prelate *nullius* before a lav judge (c. 2341).

6. Violate the enclosure of nuns (c. 2342, n. 1).

7. Violate the enclosure of regular men (c. 2342, n. 2).

8. Leave their enclosure in the case of nuns (c. 2342, n. 3).

9. Usurp ecclesiastical goods (c. 2346).

10. Engage in or promote duels (c. 2351).

11. Attempt marriage in the case of clerics in major orders and religious with solemn vows, also their consorts (c. 2388, §1).

12. Commit simony in relation to ecclesiastical offices, benefices and dignities (c. 2392).

13. Unlawfully tamper with the documents of the episcopal archives, *sede vacante* (c. 2405).

d. Reserved to the Ordinary incurred by those who

1. Contract marriage before a non-Catholic minister; educate their children outside of the faith; offer their children to non-Catholic ministers for baptism; agree when marrying to raise the children outside of the faith (c. 2319).

2. Fabricate, sell, distribute, expose false relics (c. 2326).

3. Lay violent hands on a cleric, religious or novice in cases not included above in a-2; b-8 (c. 2343, §4).

4. Procure abortion (c. 2350, §1).

5. Apostatize from their religious organization (c. 2385).

6. Attempt, or contract marriage with simple perpetual religious vows (c. 2388).

e. Reserved to no one incurred by those who

1. Edit works of Sacred Scripture without permission, including the author (c. 2318).

2. Grant ecclesiastical burial to an infidel, schismatic, apostate, from the faith, or to a heretic, excommunicated or interdicted person (c. 2339).

3. .Alienate ecclesiastical goods beyond the value of 30,000 lire without Apostolic induit (c. 2347. n. 3).

4. rurcc anotacr to embrace the clerical or religious state (c. 2352).

5. Omit to denounce a confessor guilty of solicitation (c. 2368).

2. Suspensions

a. Reserved to the Holy See incurred by those who

1. Consecrate a bishop without Apostolic mandate (c. 2370).

2. Commit simony in the reception and administration of the sacraments (c. 2371).

3. Knowingly receive ordination from an excommunicated, suspended, interdicted cleric, or from an apostate from the faith, a heretic or schismatic (c. 2372).

4. Ordain without dimissorials, testimonial letters, or a canonical title (c. 2387).

5. Are declared to have made an invalid religious profession through fraud (c. 2387).

6. Admit to office an elected, presented or nominated candidate without inspecting his letters of confirmation (c. 2394, n. 3).

b. Reserved to the Ordinary incurred by those who

1. Cite a cleric, religious or novice before a lay judge (c. 2341).

2. Take flight *(fugitivus)* from their religion after being in major orders (c. 2386).

c. Reserved to no one incurred by those who

1. Hear confessions, being priests, or absolve from reserved cases, without jurisdiction (c. 2366).

2. Permit themselves to be ordained without dimissorials. before the canonical age, or without observing the interstices (c. 2374).

3. Resign an office or benefice into the hands of a layman (c. 2400).

4. Fail to receive the blessing in the case of an abbot or prelate *nullius* (c. 2402).

5. Unlawfully grant dimissorials in the case of the vicar-capitular or diocesan administrator (c. 2409).

6. Send their religious subjects to a strange bishop for ordination (c. 2410).

3. Interdicts

a. Reserved to the Holy See *speciali modo* incurred bv those who
1. As moral persons appeal to an ecumenical council (c. 2332).

b. Reserved to the Ordinary incurred by those who

1. Conduct divine services in interdicted places, or command others to do this, or admit excommunicated, interdicted or suspended clerics to active participation in divine services (c. 2338, §3).

2. Are the cause of a local interdict, or of an interdict indicted upon a moral person (c. 2338, §4).

Excommunication Decreed by the

Council of Baltimore, Reserved to the Local Ordinary and Incurred by Those Who

1. Contract marriage before a civil official after obtaining a civil divorce.

Episcopal Reservations or Censures

1. All such as may be contained in the statutes of the diocese.

QUINQUENNIAL FACULTIES OF THE BISHOPS AND OTHER LOCAL ORDINARIES OF THE UNITED STATES

(Formula IV)

Note: The following faculties replace those which obtained in pre-Code days. The present faculties were granted soon after the promulgation of the Code to local Ordinaries of many countries including those of the U. S., Ordinaries of other countries receiving other formula faculties. The quinquennial faculties, as their name indicates, arc valid for five years, and are usually renewed without modification at the expiration of that time. The present faculties are valid from Jan. 1, 1944 to Dec. 31, 1949.

The faculties from the Holy Office as herein presented arc the modified faculties which went into effect July 1, 1946, and will remain in force until Dec. 31, 1949, at least as far as local Ordinaries of the United States are concerned.

At times the Holy Sec grants particular faculties to the bishops of certain countries in addition to the general category represented

by Formula IV. Such additional faculties have been given to our bishops from time to time, and they are found listed herein at the end of the general formula faculties.

Faculties From the Holy Office

(Cfr. *The Jurist,* 1946, Oct. 534-539 for the Latin text of these revised faculties).

1. The faculty to grant for not longer than three years permission to read and keep prohibited books and periodicals, but under custody lest they fall into the hands of others, excepting works which professedly defend heresy or schism, or which attempt to overthrow the very fundamentals of religion, and excepting works which of set purpose treat of obscene matters. The Ordinary can give this permission to any of the faithful under his jurisdiction, but with discretion and for a just and reasonable cause as stated in c. 1402, $2, that is to say, to those only who have real need to read the books or periodicals either to attack and challenge them, or to carry on their legitimate business, or to pursue a justified course of studies.

Official note: The above faculties are given to bishops to be exercised by them personally, in other words, they are not to delegate them to others. And they have a grave obligation in conscience to see to it that the above prescribed conditions are verified.

2. To dispense for just and grave causes his own subjects, even though these are outside of his territory at the time, and non-subjects while they are in his territory, from the impediment of mixed religion, and, if the case so warrants, from disparity of cult *atl cautelam* as often as a prudent doubt arises concerning the baptism of the non-Catholic; if before the marriage the non-Catholic cannot be induced to embrace the true religion, or the Catholic to refrain from the marriage, and if the conditions demanded by the Church as contained in the rulings of c. 1061, §2 are as a rule first verified, and *the Ordinary himself is morally certain that they will be fulfilled,* namely: on the part of the non-Catholic the promise to remove from the Catholic spouse the danger of perversion, and a promise on the part of both spouses that all children of both sexes shall positively he baptized and educated in the Catholic religion; and the Catholic is to be reminded of the obligation he, or she, is under to strive prudently to have the other party embrace the Catholic faith.

Moreover, the nupturients shall be reminded that they may not, either before or after their Catholic marriage, approach also a non-Catholic minister to give or renew marriage consent as stated in

c. 1063, §1, and this under penalty of excommunication *latae sententiae* reserved to the Ordinary to be incurred by the Catholic as stated in c. 2319, §1, n. 1; while for the rest those rules which c. 1063, §2 contains for the guidance of the pastor must be strictly observed.

But if the parties are now living in concubinage, opportune measures shall be employed to remove any scandal that may be present, and the Catholic shall be properly disposed to receive the grace of God, being first absolved from the excommunication he contracted if perhaps he married before a non-Catholic minister, and he shall be given an appropriate and salutary penance; and if from their illicit union children have already been born, the parties shall be warned of their serious obligation arising from divine law to see, as far as possible, to their. Catholic education and (if the case is such) their conversion and baptism, and an explicit promise to fulfill this obligation shall be required of the Catholic.

[Our note: The last lines in the preceding paragraph modify the former faculties and liberalize them somewhat. Notice that if a mixed marriage is to be validated under the present arrangement the promises extend only to the children to be born, not to the children already bom, or rather the promise to educate the offspring already born and raise them as Catholics is required only of the Catholic, although the non-Catholic shall be *reminded* that divine law expects his cooperation also. Striving for the *conversion* and baptism of the offspring by the Catholic supposes the parties to have been married invalidly, or to be living in concubinage for some time, long enough to have had by this time grown children, i.e., at least seven or more years old so that instructions would he in place before they received baptism and other sacraments.]

3. To dispense for just and grave reasons in favor of his own subjects even though these are outside of his territory at the time, and in favor of non-subjects while these are in his territory, from the impediment of disparity of cult, excepting the case of marriage with a Mohammedan, if this can be done without contumely to the Creator, and the non-baptized party cannot be induced to embrace the true religion, nor the Catholic to refrain from the marriage, provided the conditions demanded by the Church as laid down in c. 1061, §2 arc first as a rule verified, and *the Ordinary himself is morally certain that they will be fulfilled,* namely: on the part of the non-baptised person a promise to remove from the Catholic spouse the danger of perversion, and a promise from both parties that all children of both sexes shall positively be baptized and educated in the Catholic religion, and the Catholic shall be informed of his or

her obligation to strive prudently for the conversion to the faith *of* the other.

They shall also be warned that they may not approach a minister of a false cult before or after their Catholic marriage either to give or renew marriage consent, as stated in c. 1063, §1 ; as for the rest, the rules found in c. 1063, §2 for the guidance of the pastor in this situation shall be strictly observed. As regards the legitimation of the children, c. 1051 must be kept in mind.

If the parties are now living in concubinage, opportune measures shall be employed to remove scandal if any is present, and the Catholic shall be properly disposed to receive the grace of God ; but if children have already been born of their illicit union, the warning shall be given and the promise exacted as stated above under n. 2.

For the rest, as concerns the banns, the asking of marriage consent, and the sacred rites, whether there is question of mixed religion or disparity of cult, let the rules contained in c. 1026, 1102, 1109 be observed; and after a marriage of this kind has been celebrated, whether in his own or in another Ordinary's territory, let the local Ordinary be vigilant that the spouses faithfully carry out the promises which they made.

[Our Note—According to the present modified faculties only the Catholic must make an explicit promise with reference to children *already born,* also in case a dispensation is granted for disparity of cult. Observe also that our bishops may now dispense and permit a Catholic to marry a Jew, the limitation being restricted henceforth only to the case of a marriage between a Catholic and a Mohammedan.]

4. To validate by means of the *sanatio in radice* marriages attempted before a civil official or a non-Catholic minister by his own subjects even though these arc outside of his territory when he dispenses, and by non-subjccts if these are now in his territory, if the marriages were contracted with the impediment of mixed religion or disparity of cult, provided consent perseveres in both parties, and it cannot be renewed in canonical form, cither because the non-Catholic cannot be told of the invalidity of the marriage without danger of grave harm or inconvenience to the Catholic spouse, or because the non-Catholic cannot be induced in any way to renew marriage consent before the Church, or to give the promises required by c. 1061, §2; provided:

a) that there is moral certainty that the non-Catholic will not prevent the baptism and Catholic education of any children that may be born from now on;

b) that the Catholic explicitly promises that, as far as he (or she) can, he will strive to have all the children to be born baptized and educated as Catholics, and (if the case is such) he will strive for the conversion, baptism and Catholic rearing of the children already born;

c) that the parties did not, prior to their attempted marriage, whether by a private or public agreement, bind themselves to raise the offspring as non-Catholics;

d) that neither party is now insane;

5) that at least the Catholic is aware of the sanation and consents to it;

6) that no other canonical diriment impediment is present in the case for which (he Ordinary cannot grant a dispensation or sanation.

Moreover, the bishop shall seriously advise the Catholic of the very grave offense he has been guilty of, and shall impose upon him a salutary penance, and, if the case is such, he shall absolve him from the excommunication of c. 2319, §1, informing him at the same time that by reason of the favor of the sanation he received his marriage has become valid, legitimate, and indissoluble by divine law, and that the offspring possibly already born or to be born is to be considered legitimate; and he shall remind him of the obligation he is under to strive prudently for the conversion to the faith of his non-Catholic spouse.

And since there must be proof in the external forum of the validity of the marriage and the legitimacy of the children, the bishop shall direct that the document conveying the sanation and the document attesting to its execution he carefully filed in the diocesan curia, and he shall see to it, unless prudence dictates otherwise, that a note concerning the sanation of the marriage be entered into the baptismal register of the parish where the Catholic was baptized, together with annotation of day and year.

It is the mind of the Holy Office that the bishop use this faculty of grantin(j sanations personally, i. e., he shall subdelegate the faculty to no one else.

To be noted: Whenever he grants a dispensation or sanation as above the bishop or Ordinary shall make explicit mention of Apostolic delegation (c. 1057).

At the end of each year the Ordinary shall report to the Holy Office the number and kinds of dispensations he granted in virtue of the present induit.

Faculties From the Congr. of the Sacraments

1. To dispense for a just and reasonable cause from the impediments of minor degree as in c. 1042, and from the impediments of c. 1058, but in the latter case only to permit marriage.

2. To dispense from the impediments of major degree as below, if a grave and urgent cause is present, and there would be danger in delay, and the marriage cannot be put off until a dispensation is obtained from the Holy See, namely:

a) From consanguinity in the second or third degree of the collateral line touching the first, provided no scandal or amazement results therefrom ;

b) From consanguinity in the second degree of the collateral line;

c) From affinity in the first degree of the collateral line, whether simple or touching the second degree;

d) From public propriety in the first degree, provided there is no danger that one spouse is the child of the other.

3. To dispense on the occasion of pastoral visitations, or sacred missions, but not otherwise, from all marriage impediments mentioned above in favor of those who are living in concubinage.

4. To validate by means of the *sanatio in radice* marriages invalid by reason of some impediment of ecclesiastical law, whether of major or minor degree, excepting the impediment arising from the priesthood, or from affinity in the direct line resulting from a consummated marriage, provided it is seriously inconvenient to have the party ignorant of the nullity of the marriage to renew consent, as long as the original consent perseveres, and there is no danger of divorce, and the party conscious of the impediment is informed of the sanation and its effects, and the sanation itself is duly recorded in the baptismal and marriage registers.

Official notes'.— 1) The Ordinary can make use of the above faculties either personally or through other competent persons designated by himself, both in the case of marriages to be contracted and to he validated, and this in favor of his own subjects no matter where they are at the time, and in favor of non-subjccts actually in his territory, but making mention in each case of the Apostolic delegation as c. 1057 rules.

2) When using these faculties let him keep in mind the prescriptions of c. 1048 and 1054.

3) At the end of each year the Ordinary shall report to this Congregation through the S. Consistorial Congregation the number and kinds of dispensations which he granted in virtue of the present induit.

Faculties From the Congr. of the Council

1. To reduce for five years on account of diminished revenues perpetual Mass obligations in such numbers that the ordinary stipend which prevails in the diocese can be realized from each Mass, as often as there is no one who can be legally held, or effectively urged, to increase the capital for the founded Masses, and consequently the income, but with the understanding that each celebrant notify the diocesan curia each year concerning the fulfillment of the Mass obligations thus reduced.

2. To transfer Mass obligations for five years within the limits of his diocese to days, churches or altars other than those designated in the charter of foundation, provided a real necessity exists for doing this, and divine service is not curtailed thereby, nor the people put to an inconvenience to hear Mass, and excepting from this faculty legacies which can he easily fulfilled in the designated places by an increase in the stipend ; and care shall be taken that each year the diocesan curia be informed by the different celebrants of the transferred Mass obligations which thev fulfilled.

3. To transfer for five years any excess of Mass obligations, even permitting them to be satisfied outside of the diocese, but taking care that as many intentions are satisfied in the diocese as is possible; and the canons of the Code shall be strictly observed as regards the precautions to be taken whenever Mass stipends are transferred or sent away.

4. To permit that the private recitation of Matins and Lauds be anticipated from one o'clock in the afternoon whenever a reasonable cause is present.

5. To permit the alienation of ecclesiastical goods up to the value of $10,000 for (the Ordinaries of) the United States and Canada, and to the sum of 15,000 pesos in South America and other countries (i.e., for those Ordinaries—*our parenthetes},* provided there is real need of the alienation, and time docs not permit recourse to the Holy See, but notifying the Holy See immediately after the transacted alienations.

Faculties From the Congr. of Religious

1. To dispense at the request of the superiors from the impediment of illegitimacy to permit entrance into a religion if the dispensation is required bv the constitutions of the institute, provided there is no question of sacrilegious offspring, and with the understanding that the individual so dispensed is not thereby qualified for election to major offices in the sense of c. 504 :

2. To permit that three Masses be celebrated in accordance with the rubrics at midnight of Christmas in churches of religious not included under c. 821, §2, the permission to allow those attending Mass to receive communion; but all three Masses must be celebrated by the same priest.

3. To dispense from over-age to allow a person to receive the religious habit if the constitutions of the institution make such dispensation necessary, provided the General or Provincial Superioress with her council first give consent in each case, and provided the postulant is not over 40 years old, and possesses all other necessary qualifications.

4. To dispense, even in the case of exempt religious, from lack of age required for the priesthood, namely

a) To dispense candidates who lack not more than 12 months of the canonical age required for the priesthood, but the ordinands must have received dimissorials from their superior, and must possess all other qualifications required by the sacred canons, and particularly must they have completed their theology course as prescribed in c. 976, §2.

b) To dispense candidates who lack 16 months of the canonical age, provided the candidates have obtained, or need no other Apostolic dispensation, and observing the other conditions mentioned above under (a).

5. To dispense nuns and Sisters from the lack of dowry, whollj or in part, provided the Institute does not unduly suffer financially thereby, and that the postulant possesses such qualifications that create a firm hope that she will be useful to the Institute.

6. To reappoint a confessor to a fourth or fifth term of three years of office provided the consent of the greater part of the religious women, expressed in a meeting and by secret ballot, including religious who otherwise have no right to any vote, be given to such reappointment, but making adequate provision for those, if any, who dissent and who, if anv, desire a different confessor.

7. To permit that Mass be celebrated on Holy Thursday, and that communion be received even to satisfy the Easter duty, by all who habitually live with the community.

8. To permit nuns to enter their church so that they can clean and adorn it better than others could, provided that all outsiders first leave the church, including the confessor himself and all hired help who do not live within the enclosure, on condition that the doors of the church be locked and the keys given to the Mother

Superior, that the nuns shall always work at least by twos in the church, that the door connecting church and enclosure be locked with a double key, one to be kept by the Superioress and the other by a nun designated by the Ordinary, and finally that the said door shall not be opened save on designated occasions and with the precautions described.

9. To permit nuns to leave the cloister to undergo an urgently needed operation, even though there is no immediate danger of death, or of very serious illness, the permission to be valid only for the length of time absolutely necessary, and due precautions must be imposed.

Faculties From the Congr. of Sacred Rites

1. To appoint priests, if possible vested with an ecclesiastical dignity, to consecrate both fixed and portable altars, observing the rubrics and formula of the Roman Pontifical, and using also the approved short formula for portable altars.

2. To appoint priests, vested if possible with an ecclesiastical dignity, to reconsecrate fixed and portable altars that have lost their consecration, using the short formula B for the cases spoken of in c. 1200, §2, while for the cases mentioned in c. 1200, §1, and for which the Code itself grants faculties, formula A is to be used.

3. To appoint priests, vested if possible with an ecclesiastical dignity, to consecrate chalices and patens, observing the rites and formula of the Roman Pontifical.

4. To allow priests, who have the faculty to binate, to omit the Passion in one Mass on days when the Mass calls for the Passion, saying only the last part: *Altera autem die,* etc., having said beforehand: *Munda cor meurn,* etc. *Sequentia Sancti Euangelii secundum {Matthaeum).*

5. To bless marriages outside of Mass, or to recite prayers over the spouses, using approved formulas; and the Ordinary may subdelegate this faculty.

6. To bless and impose the five scapulars with the single formula, and he may subdclcgatc this faculty.

7. To bless and impose the five scapulars with the single formula without the need of recourse to the competent religious Ordinaries or Congregations, and without the need of inscribing the names of the enrolled, whenever there is a great gathering of people during spiritual retreats or missions: and this faculty he may subdelegate.

S. To bless the sacred oils on Holy Thursday with only the assistance of so many priests and ministers as it is possible to have for the bishop celebrant in view of local conditions.

9. To permit the use of incense in high Masses celebrated without deacon and subdeacon, and this on first and second class doubles, on Sundays, and whenever Mass is sung before the Blessed Sacrament exposed.

10. To permit the use of the Memoriale Rituum of Benedict XIII for Holy Week functions, and for the blessing of ashes, candles and palms in churches and public or semi-public chapels (which are not parochial or quasi-parochial), if there is sufficient assurance that the sacred mysteries will suffer nothing in point of decorum and reverence.

11. To bless objects of piety with the sign of the cross, observing the prescribed rubrics. But on the occasion of the pastoral visitation when several seek blessings for many and various objects, it is permitted to use simply the short formula when making the sign of the cross, namely: *(Benedicat haec omnia Deus, Pater, et Bilius et Spiritus Sanctus. Amen.).*

12. To say one low requiem Mass each week in his own chapel but not on a day of first or second class double, a Sunday, holyday of obligation even though suppressed, a day during a privileged octave, a ferial day of Lent, an ember day, Rogation Monday, or a vigil or ferial on which a Sunday office is being anticipated or carried over, and observing the rubrics in all other respects.

Faculties From the Sacred Penitentiary

1. To absolve any penitent whomsoever (excepting heretics who of set purpose spread heresy among the faithful) from all censures and penalties incurred by reason of heretical commitments, whether made secretly or openly before others; but the penitent may not be absolved before he denounces those whom he knows to be professedly teaching heresy, as well as any ecclesiastics or religious whom he may have had as accomplices; and if for just reasons this denunciation cannot be made before absolution is given, he must seriously promise to make the denunciation as soon as he can and in the best possible way; and the penitent must first secretly abjure his heresy in the presence of the authority who absolves him. He shall be given a heavy, salutary penance in proportion to the gravity of his offenses, and shall be enjoined to frequent the sacraments and to make retractions before those persons to whom he manifested his heresies, and to repair the scandal he caused.

2. To absolve from censures and other ecclesiastical penalties those who have defended, or knowingly and without due permission read or retained books of apostates, heretics and schismatics that advocate apostacy, heresy or schism, or other books condemned by Apostolic Letters, but imposing a salutary and befitting penance, and the firm obligation of destroying, or handing over to the Ordinary or confessor, the said books as far as possible.

3. To absolve from their censures those who have impeded dircctlv or indirectly the exercise of ecclesiastical jurisdiction, whether of the internal or external forum, and who to effect this had recourse to the lay authorities.

4. To absolve from the censures and penalties decreed against duelling, but only for cases not yet brought to the attention of the authorities in the external forum, enjoining a salutary penance and imposing all other obligations usually demanded.

5. To absolve from censures and ecclesiastical penalties those who have joined a masonic sect or similar society which machinates against the Church or civil authority, but under condition that they leave the sect or society completely, and abjure it; that they denounce as prescribed by c. 2336, §2 all ecclesiastical and religious persons whom they know to be members; that they consign all books, manuscripts and insignia pertaining to the sect or society, if they have any, to the absolving authority, to be forwarded cautiously to the Holy Office as soon as possible, or at least, if just and grave reasons so dictate, that they destroy the said objects, at the same time enjoining on the penitent a salutary and grave penance proportionate to the gravity of his offense, together with frequent confession, and the duty of repairing any scandal he gave.

6. To absolve from censures and ecclesiastical penalties those who without due permission entered the enclosure of regular men or women, or who admitted them, or authorized their admission, provided this was not done for a criminal purpose even though the intended crime may have been frustrated, also provided the violation of the cloister has not become a matter of the external forum, and remembering to enjoin a salutary' penance in proportion to the guilt of the offender.

7. To dispense a person who contracted marriage while bound by the vow of perfect and perpetual chastity made privately after his completed 18th year of age, and this only to the end that he may ask for the *debitum,* informing the penitent that he is held to the vow outside the licit use of marriage, and will continue to be so bound should he outlive his consort.

8. To dispense from the occult impediment of crime, provided there was no conjugicidc, and only to validate a marriage already contracted, informing the supposed spouse of the obligation of renewing consent secretly, and enjoining a grave, long and salutary penance.

To dispense as above, and within the same limitations, in the case of a marriage to be contracted, (not validated), and enjoining a long and salutary penance.

9. To dispense from the irregularity arising from voluntary homicide, or abortion, as in c. 985, n. 4, but only to permit that the penitent may exercise orders already received without danger *of* infamy or scandal, and enjoining upon him the obligation of recurring to the S. Penitentiary within a month, at least by means of a letter written by himself or his confessor, the latter concealing the penitent's name, and informing the S. Penitentiary of all the circumstances of the case, especially how often he committed the crime, and abiding by the instructions the S. Penitentiary will give him.

10. To grant under the usual conditions:

a. *A Plenary Indulgence to Be Gained by all the Faithful IFho·.*

a) Assist at Pontifical Mass celebrated by the Ordinary on a day designated by the Ordinary once a year for each designated place;

b) Devoutly visit a church or chapel, public or semi-public, during the hours when the Ordinary is making his pastoral visitation there;

c) Visit the church where the diocesan synod is being held and at the time when it is held;

d) Receive communion on a general communion day in the cathedral, or any other church designated by the Ordinary;

e) Hear at least half the sermons during the time of a mission conducted in the diocese by permission of the Ordinary.

b. *A Partial Indulgence of* 200 *Days to Be Gained by Those Devoutly Attending Any Sermon Referred to Under* (c) *Above.*

Official remarks—The Ordinary, in virtue of special authority of the Holy See given to him, may use the faculties just listed, of absolving from censures and of dispensing for the forum of' conscience even outside of confession, in favor of his own subjects even though these are outside of his diocese at the time, and in favor of non-subjects who are actually in his diocese; and habitual subdelegation of the same faculties he may, if he wishes, grant also

to the canon penitentiary and to the vicars forane, but to these only, to be exercised by them within the diocese and in the sacramental forum only; to other priests he may subdelegate these faculties only in each case as they recur to him in the name of their penitents, and explain their case, unless for special reasons he prefers to communicate these faculties to certain confessors expressly deputed by himself for a length of time he deems best.

The Ordinary cannot subdelegate the above faculties of imparting indulgences, but must exercise all such faculties in person.

ADDITIONAL FACULTIES GRANTED TO THE LOCAL ORDINARIES OF THE UNITED STATES

1. An induit first granted to our bishops by the S. C. Propaganda, and since renewed periodically by the S. C. Council, authorizes our bishops to permit the use of flesh meat to workingmen and their families at one meal on all days of fast and abstinence, excepting all Fridays of the years, Ash Wednesday, the forenoon of Holy Saturday and the Vigil of Christmas.

2. On June 2, 1920 the S. C. Council granted our bishops an induit, which is renewed periodically, in virtue of which they may transfer the obligation of abstinence during Lent from Saturday to Wednesday, excepting Ember Saturday.

3. A decree of the S. C. Consistory on Oct. 15, 1931 authorized our bishops to dispense from the law of fast and abstinence whenever a civil holiday falls on a day of fast and abstinence, of fast alone or of abstinence alone. The faculty is renewed every five years. It was renewed April, 1947 for five years.

But the Ordinaries are to exhort the faithful who use the dispensation to make some offering, preferably in favor of the poor.

4. The S. C. Sacraments on March 25, 1946 authorized our bishops for three years to dispense from the Eucharistic fast *per modum potus et medicinae* the sick who arc confined in hospitals to enable them to communicate daily as long as their illness lasts, provided this causes no scandal or wonderment on the part of the faithful, and provided sick priests do not use this faulty to say Mass without fasting (cfr. *The Jurist,* 1946, July, 423).

5. On May 27, 1946 the S. C. Sacraments authorized our

bishops for a period of three years to dispense from the Eucharistic fast all persons who habitually work past midnight. Persons so dispensed may communicate without fasting on all Sundays and holvdays of obligation, and on any other one day of their choice each week, provided they abstain from solid food for four hours prior to communion, and from liquids from one hour before communion, and from alcoholic beverages from midnight. But scandal or wonderment on the part of the faithful must be safeguarded against, and the bishops should not grant blanket or general dispensations. They may, finally, permit Sisters who work after midnight in the service of the sick, and within the above limitations, to communicate without fasting whenever they have spent the preceding night in serving the sick (cfr. *The Jurist,* 1946, Oct. 538-539).

6. In two communications dated May 17, 1946 and July 26. 1946 the Apostolic Delegate informed our bishops that the Roman Pontiff through the S. C. Sacraments had authorized them for the duration of the faculties in n. 4 and 5 above:

a) To dispense from the Eucharistic fast within the limits above under (5) sick priests confined to the rectory, a religious house, or a private home;

b) To extend the dispensation in favor of Sisters who serve the sick as above in (5) to religious brothers whenever they spend the preceding night in ministering to the sick. The dispensation is to be granted within the same limits as above in (5) explained (cfr. HPR. 1947, May 663).

FACULTIES OF THE APOSTOLIC DELEGATE

Note: The following faculties our Apostolic Delegate to the United States has in common with Nuntios, Internuntios and other Apostolic Delegates in the Church. They were granted shortly after the promulgation of the Code, and unlike the faculties of local Ordinaries, they are indefinite in their duration and do not require periodic renewal. They are broader than the faculties of the local Ordinaries. In additional to the following formula faculties the representatives of the Roman Pontiff are often vested with other delegated powers to deal with cases and conditions peculiar

to the territory of their jurisdiction. We have added at the end of the present formula faculties such other faculties enjoyed by the Apostolic Delegate to the United States.

I. Faculties of a General Nature

1. 'To visit personally, or through an ecclesiastic outstanding for his virtue, prudence and learning, places, persons and things mentioned in c. 344, 512, and 1382, but onlv in individual cases, not by way of habitual visitation, provided the visitation seems necessary and urgent, that the Ordinary is impeded or has neglected to make visitation, and that time does not suffice to have recourse to the Holy See.

2. To draw up personally, or through another cleric vested with an ecclesiastical dignity, all acts or so-called processes for those who have been appointed to a bishopric or archbishopric, in accordance with the regulations established for the particular country in question.

3. To confer on worthy clerics the benefices mentioned in c. 1435, §1, n. 1,3, observing the rules laid down, or to be laid down by the Apostolic Datary in this matter.

4. To absolve both in the forum of conscience and in the external forum, according to the nature of the case, from all censures reserved by law to the Roman Pontiff cither *simpliciter* or *speciali modo,* but enjoining on the penitent the obligations usually enjoined for the particular case in question.

5. To dispense men already ordained from all irregularities, whether *ex delicto* or *ex defectu,* to the end that they may celebrate Mass and obtain or retain ecclesiastical benefices, provided no scandal results therefrom, nor any impairment of divine services, and always excepting cases coming under c. 985, n. 4, and if there is question of absolving from heresy or schism, the penitent must first abjure his errors in the presence of the one who absolves him.

6. To permit for reasons of poverty that those who failed to apply Mass intentions, whether manual or founded, now satisfy such past obligations by slow degrees in the sense that they do what they can in regard to such obligations, celebrating personally or through another a certain number of Masses each month according to their means, the number to be determined in an equitable manner by the Delegate (Nuntio, Internuntio if the papal legate be one of these, which is always to be understood when we mention Apostolic Delegate—*our note),* and in occult cases by the confessor.

However, those who have been guilty of such omissions shall be advised that if, while obeying the above directions, they should die before fully satisfying their obligations in this slower way, and cannot leave sufficient funds to meet said obligations entirely or in part, the Masses that remain to be said after their death may be considered as condoned, provided they die repentant, and any deficiency will then be supplied by the Holy Sec from the treasury of the Church.

Likewise to permit in some exceptional case where altogether extraordinary circumstances make it seem expedient in the Lord to do so, that according to the capacity of the petitioner past Mass obligations be reduced to a certain number, provided the petitioner is not a repeated offender, the Holy See here also supplying for the remaining unsaid Masses from the treasury of the Church.

7. To admit to a discreet settlement for the internal forum those clerics who, possessing ecclesiastical benefices even with the care of souls attached, neglected to say divine office, and to condone in this way the income illicitly appropriated, the money accruing from the settlement to be expended for the benefit of some pious works to be determined by the Holy See.

But in the case of priests who are so destitute that they cannot make even the above discreet settlement, to condone the income entirely, enjoining, however, an alms in proportion to the petitioner's ability in an amount to be determined by the Delegate or the confessor. But all these condonations shall be so transacted that no prejudice to the rights of third parties results therefrom by way of lessened daily distributions (for canons who were faithful in attending choir—*our note).*

8. To condone in the internal forum any income unlawfully derived from a benefice obtained invalidity by reason of real simony, but enjoining a proportionate and salutary penance in addition to an alms in an amount equal to the penitent's means, and requiring that said benefice be vacated. But if for just and reasonable causes this cannot be done, especially if it is a parochial benefice, and there are no other priests who can be given the parish, to validate the title of the benefice itself.

9. To absolve, cither personally or through other qualified ecclesiastics of their appointment, all persons who now are in possession of lands that once belonged to the Church, but which for many years have since been taken from the Church through civil legislation, and who now hold said lands cither in virtue of inheritance from their ancestors, or by purchase or any other similar con-

tract entered upon with former possessors, and to pronounce each of them competent to retain legally said lands as their own, and to dispose of the same freely either during life or by last will, but enjoining a congruous alms once and forever in favor of some church or pious work, the amount to be determined according to the prudent judgment of the person who absolves them.

10. To dispense in particular cases when it is judged expedient in the Lord to do so, releasing from the law of abstinence on the day» prescribed for abstinence, even on fast days and during Lent.

11. To permit clerics and religious as individuals to anticipate the private recitation of Matins and Lauds immediately after the noon hour, and this at any time of the year but for a reasonable cause.

12. To commute because of weak eyesight, or for any other just cause, and as long as the cause continues, the obligation of reciting the canonical hours into the daily recitation of the full rosary of the B. V. M., or into some other befitting pious prayers, but not exempting from the obligation of attending choir those who are held to choir.

13. To dispense in urgent cases from the need of academic degrees so as to enable clerics to acquire canonical prebends which call for those degrees in virtue of the laws of the pious foundation, provided the dispensation does not prejudice the rights of others.

14. To grant in accordance with the Const. *Officiorum ac munerum* the faculty of keeping and reading forbidden books and periodicals, observing the precautions and restrictions that seem necessary or useful in each case, and which are standard practise with the Holy Office.

15. To commute or dispense, in view of the reasons presented, all simple private vows, even though reserved to the Holy See, excepting vows whose dispensation may prove detrimental to the rights of third parties.

16. To dispense for a just cause from any oath, provided the right of another suffers nothing thereby.

17. To remit or condone in favor of poor penitents and for the forum of conscience only, a part of the goods stolen or retained by them, whenever the owner is unknown, and the case is occult; but with the understanding that what still remains in their possession of the ill-gotten goods, if any, be given, or its equivalent in money, or some part thereof, to be determined after considering the penitent's poverty, be distributed among the poor of the place, or given to some pious local work if possible.

18. To receive, or to delegate in each case another qualified ecclesiastic to receive, the denunciations of the crime of solicitation, but observing always the form and tenor of the instructions which the Holy Office is supposed to give.

19. To extend for a short time the faculties, indulgences and induits granted by the Holy See, but which expired before a timely request for their renewal was sent to the Holy See, but imposing the obligation upon the beneficiary to recur at once to the Holy See to obtain the favor of an extention, or the favor *of* an answer if the petition had already been sent but not in time.

FACULTIES CONCERNING INDULGENCES

20. To grant a plenary indulgence six times a year, on the occasion of some solemnity, in favor of all the faithful of eithei sex who in the spirit of true repentance, having confessed their sins and received communion, visit a church or public oratory, and pray there for a while for the intention of the Supreme Pontiff.

To grant the same indulgence also to the faithful who live in a place where it is impossible or difficult to go to confession, provided they substitute some other pious work in place of the reception of the sacraments, and at least with a contrite heart firmly purpose to confess their sins as soon as they are able.

21. To impart three times a year, on days of their own choice, but not in the same place, the papal blessing, according to the printed form inserted in these faculties, with a plenary indulgence to be gained by those who in the spirit of true repentance, having confessed their sins and received communion, are present at the blessing, and pray to God for the propagation of our holy faith and for the exaltation of the Roman Catholic Church.

22. To grant, not in perpetuity but for a limited time according to their good judgment, a plenary indulgence on the occasion of the Forty Hours' devotion in favor of the faithful who penitently confess their sins and receive communion; the indulgence to appic- to the days appointed by the local Ordinary for that devotion, even though for a reasonable cause the Clementine Instruction is not observed in its entirety during the Forty Hours.

23. Likewise to grant, in the act of their conversion, a plenary indulgence to first converts from heresy returning to the bosom of the Catholic Church.

24. To grant in individual cases, for a limited time, a plenary indulgence on the occasion of missions, the faithful observing the rules prescribed otherwise for gaining such indulgences.

25. To declare in harmony with c. 916 one altar of each and every church in the territory of his jurisdiction an *altare privilegiatum, quotidianum, perpetuum*.

26. To grant a 200 days' indulgence to all who attend the sacred functions conducted by themselves, but only during their tenure of office.

27. To communicate to ecclesiastics the faculty of erecting the Way of the Cross with the attached indulgences; also of establishing pious sodalities of the Rosary, of Our Lady of Mt. Carmel, and of the Seven Sorrows, but with the understanding that this faculty is not to be exercised in places where there is a house of religious who by Apostolic grant enjoy the privileges in question.

Also to empower ecclesiastics, under the restrictions just stated, to bless and impose the scapulars of said sodalities.

28. To declare that the indulgences hitherto mentioned be considered as applicable to the souls in purgatory.

FACULTIES CONCERNING MARRIAGE

29. To dispense from the impedient impediments of the Code, observing scrupulously the conditions there laid down, especially with regard to dispensations from mixed religion, and notifying the Holy Office each year before Easter of the number of dispensations given the previous year from mixed religion, and other attendant circumstances.

30. To dispense . . . times, but for a grave cause from all diriment matrimonial impediments of ecclesiastical law, whether for public or occult cases, whether of major or minor degree, excepting the impediment of affinity in the direct line after the marriage which gave rise to the impediment has been consummated, and excepting the impediment of major orders and the solemn vow of chastity.

As to the diriment impediment of disparity of cult, it is not allowed to dispense without observing the conditions pointed out in c. 1060-1064, and in a marriage of a Catholic with a Jew or Mohammedan, without first making sure that the infidel is free of a previous bond so as to remove the danger of polygamy, and that there is no danger of circumcision to the offspring, and, if a civil marriage must be gone through also, that it be a purely civil

ceremony without the invocation of Mohammed or the injection *of any* other such like superstition.

If possible, the nupturients arc to make an offering according to their means, which the Apostolic Delegate shall send to the Holy Office if he dispenses from disparity of cult, or to the Congr. of the Sacraments if he dispenses from any other impediment.

31. To grant a radical sanation . . . times to validate marriages invalid by reason of any diriment impediment just mentioned in n. 30, when it is morally impossible for the spouses to renew consent in the ordinary way, but informing the party conscious of the impediment of the sanation and its effects. The rescript of such sanation shall be carefully filed in the episcopal archives so that there will always be proof that the marriage was validated and the offspring legitimitized.

But *if* the marriage was invalid because of neglect of the canonical form, the sanation shall not be granted excepting the case where the one party refuses to renew consent in the prescribed form, or if he were asked to do so, grave harm or danger would threaten the petitioner.

And if the marriage was invalid because the canonical form was neglected in the case of mixed religion or disparity of cult, and the non-Catholic cannot be induced to renew consent according to canon law, the sanation shall not be granted unless the Catholic spouse assumes the obligation of striving as far as he can for the conversion of his consort and the Catholic education of the children, in which case the Catholic shall also be absolved from the censure he incurred *if* the marriage was contracted before a non-Catholic minister, and he shall be told that he was guilty of a very serious offense.

[The faculties of papal legates of dispensing and granting sanations in the case of marriages where mixed religion or disparity of cult is present, is seldom used in those countries, like ours, where the local Ordinaries themselves have the same faculties—*our note.]*

FACULTIES CONCERNING OTHER SACRAMENTS AND SACRED RITES

32. To authorize simple priests (not necessarily dignitaries —*our note)* of approved learning and virtue to administer the sacrament of confirmation in those districts only where there arc no bishops, provided they observe the rules of c. 781, §1 ; 782, §4; 784, and this authorization shall be given only for a limited time.

33. To permit one low Mass in public oratories on Holy Thursday, but only from year to year, or for a limited number of years.

34. To allow infirm priests, while their infirmity lasts, or aged priests, the induit of a private oratory in which to say Mass, but provided the usual canonical conditions laid down in cases of such induits be observed by the priests.

35. To allow priests of their jurisdiction the use of the wig when they celebrate Mass whenever there is a real need of it.

36. To grant an induit for individual cases to allow the celebration of Mass outside of any church or oratory, and to erect an altar in the open air, and this for a just cause in harmony with c. 822, §4.

37. To permit priests on a voyage, whether at open sea or on rivers of the interior, to celebrate Mass aboard ship on a portable altar, provided the place where Mass is celebrated has nothing indecent or unbecoming about it, and provided there is no danger that the chalice will be spilled.

38. To consecrate either in person or through simple priests of their choice, both immovable and movable altars that have lost their original consecration through some mishap, but observing the conditions laid down by the Congr. of Rites as contained in the *Ritus et formula brevior for* these cases.

39. To permit for a reasonable cause in particular cases, or for a limited time, that Mass be celebrated any time after three o'clock in the morning.

40. To allow for a limited time that a requiem Mass be celebrated two or three times a week in some church with the consent of the Ordinary, even on feasts of double rite, excepting doubles of the first and second class, all Sundays and holydays of obligation, privileged ferial days, vigils and octaves.

41. To grant priests, secular or religious, who suffer from poor eyesight the faculty to celebrate either the votive Mass of the B. V. M., or the requiem Mass, provided that, if there is need of it, they employ the services of another priest to assist at the Mass, and safeguarding the obligation they have of explaining the Gospel on the days prescribed, if they are pastors.

Likewise to grant the same faculty to priests who are totally blind, but they must always have a priest or deacon to assist them at Mass, and the faculty shall not be granted until after a test has been made and they are found to fail in none of the rubrics.

42. To allow the sick confined to their beds, and for whom there is no hope of an early recovery to receive communion once a week even before a month of illness has elapsed, permitting them to take medicine or something by way of drink (c. 858, §2).

[Our bishops can dispense *hospitalized* sick. The Apostolic Delegate's faculties are broader—*oar note.*]

To allow sick persons not confined to bed, but who suffer from some ailment by reason of which in the judgment of the doctor they cannot keep the fast without danger to their health, to receive communion once a week without fasting, i. e., by taking medicine or something *per modium potus.*

[This faculty our bishops do not have, and it is one very frequently exercised by the Apostolic Delegate—*our note.]*

43. To permit in individual cases that a solemn high Mass, or even low Masses, be celebrated of a saint in churches in which the feast of a saint listed in the Roman martyrology, or otherwise recognized by the Holy Sec, is observed with solemnities, in the event the feast does not complement the office of the day, provided the feast does not concur with an office of a double rite, or a Sunday of the first class, the vigil of Christmas or Pentecost, the feast of the Circumcision, the octave day of Epiphany or of Corpus Christi, Ash Wednesday or Holy Week.

44. To authorize for the places of their jurisdiction in individual cases, or for a limited time, any priest to consecrate, according to the form of the Roman Pontifical, chalices, patens and altar stones, using sacred oils blessed by a Catholic bishop.

45. To bless bells and to consecrate churches, provided they inform the local Ordinary beforehand, and he does not object.

FACULTIES CONCERNING RELIGIOUS

46. To take action in extraordinary cases of grave necessity concerning the state of any religious house, by cooperating through their advice and help with the superiors so that opportune measures may be applied to remove the abuses, and to lead the religious back to the perfection of their state, and notifying the Holy Sec as soon as possible if they believe any new regulations would prove useful to cloistered communities.

47. To dispense for a just cause at the request of the community from the lack of dowry which is prescribed for Sisters or nuns in their religion.

48. To grant to diocesan Ordinaries in individual cases, or for a limited time, the faculty to place religious in charge of parishes when there is a lack of secular priests, but with the consent of the religious superiors, and with the proviso that at least two other religious live with the pastor, observing for the rest the rules of canon law in situations of this kind.

49. To permit nuns who are sick, or for other just and grave reasons, to live outside of their enclosure for a space of time to be left to the prudent judgment of the Delegate, but with the understanding that they always associate with, and be escorted by, some blood or law relative, or by some woman of good character, and that at home or elsewhere they lead a religious life removed from the society of men as it becomes virgins consecrated to God, safeguarding the law of c. 639.

50. To dispense religious of either sex *for* the forum of conscience only from the obligation of returning to their religion, and to permit them to remain in the world whenever they obtained an invalid declaration of the nullity of their vows, provided the invalidity of the declaration be occult, and with the understanding that they are still bound to the vow of perpetual chastity and to the substantial obligations of the other vows until they shall have received a special dispensation from the Holy See in their case, and if they are priests, provided they assume the garb of the secular clergy.

FACULTIES FOR PERSONAL USE AND BENEFIT

51. To recite the divine office and to celebrate Mass according to the Roman ordo used by the priests of Rome, and to grant this privilege to the priests who live with them and are subject to them.

52. To reserve the Blessed Sacrament in the house of their permanent residence, provided a lamp burn constantly before the tabernacle, the key to the latter be faithfully guarded, and all other points be strictly observed which liturgical laws lay down in this matter. The chapel itself by permission of the Supreme Pontiff is considered a public chapel.

53. To administer the sacrament of confirmation in the whole territory of their jurisdiction, as well as during a sea voyage departing from or returning to the place of their mission.

54. To hear the confessions *of* all the faithful of both sexes in their territory, or on a sea voyage as above.

55. To gain the indulgences which they choose to impart to others in virtue of faculties granted to them.

Official note—The faculties listed above in nn. 20-31, also those in η. 1, 3, 18, 32, 46, 53, 54, 55, are not granted save to clerics in episcopal orders; therefore they are not to be understood as belonging to other clerics, and particularlj' to the Delegate's auditor and secretary during the vacancy of the Delegation who may have been authorized to carry on the business of the Delegation, unless express mention of this is made, even though authority to manage the business of the Delegation had been granted together with these ordinary faculties. The Delegates shall take care not to extend beyond five or ten years induits which thej' are allowed to grant only for a limited time.

Formula faculties added to the above on June 16, 1920.

a) Whenever a vacancy occurs in any diocese of their jurisdiction the Legates may grant to the diocesan administrator all faculties which the bishop possesses by law.

b) Whenever there is urgent necessity, evident utility, and danger in delay, they may authorize the alienation of church property, or the goods of pious causes, up to the amount of 60,000 francs in countries of Europe, and up to 100,000 francs in countries outside of Europe.

c) The Legate may allow an illegitimate child to enter the seminary provided he is not the son of an adulterous or sacrilegious union, if in other respects the conditions for lawful admission to the clerical state be verified, but saving the duty of recurring to the Holy See to be ordained.

d) In districts where pastors are few, or widely scattered, so that the needs of the faithful must be met by sending missionaries to such places, they may authorize the president or superior of the mission as pastor, and other missionaries as assistants, to exercise all powers in favor of the people residing in the missions, or visiting them, as are exercised by pastors or assistant pastors in their parishes.

e) They may likewise grant the same president or superior of the mission, while these are in the place of their mission, the faculties which vicars-gcneral enjoy, and the faculties which c. 1043-1057 give to Ordinaries for marriage cases. Moreover, they may grant them the power to confirm within the limits described above in n. 32 of these faculties.

It shall be the duty of the superior of the mission to advise the local Ordinary of the power he received from the Legate, and to receive from him, as far as this is possible, territorial limits for

his mission; and when his mission ceases he must report to the local Ordinary on the sacraments administered within the confines of the mission, no less than pastors must do as regards their parishes.

Finally, the legates may subdelegate this power to the bishops within the territory of their jurisdiction, but only as individual cases arise that justify the subdelcgation.

ADDITIONAL FACULTIES ENJOYED BY OUR DELEGATE

1. A decree of the Congr. for the Oriental Church empowers Apostolic Delegates, etc., to permit the faithful to pass from the Oriental to the Latin rite, and vice versa, but they may not permit priests to so transfer (Dec. 6, 1928; *Icta,* 1928, 416).

2. According to Fr. Woeber in his dissertation "Interpellations," p. 131 (C. U. Press, 1942), our Apostolic Delegate has been authorized to dispense from the interpellations in individual cases, provided all means have been exhausted to find the infidel (even through newspapers if possible) and it results from a summary extrajudicial investigation that he cannot be found, or that the interpellations cannot be made without evident danger of grave harm to the convert or to the faithful in general. It is also stated by the same author that our bishops can ask the Holy See for the same faculties which will be granted for a certain number of cases *(ibidem).*

3. Our Apostolic Delegate in virtue of a rescript first granted June 20, 1924, may reduce Masses *pro populo* in poor parishes to those enumerated in c. 306.

4. He may permit loans, sales and the alienation of property belonging to a religious institute when the sum involved does not exceed half a million gold dollars, provided the norms made known to religious superiors by the Delegate on Nov. 13, 1936 be otherwise observed (cfr. Bouscaren: *The Canon Law Digest* for the text of that letter).

5. He may dispense religious from the Eucharistic fast and permit them to receive communion after taking something *per modum potus et medicinae* when the physician considers the keeping of the fast injurious to their health.

6. He may shorten or prolong the postulancy required by the Code.

Note—The faculties described in n. 4, 5, 6 have been published in HPR. 1947, May, 663.

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